# ATTACHMENT A

1	COMMONWEALTH OF PENNSYLVA	NIA : IN THE COURT OF COMMON PLEAS
2		OF : DAUPHIN COUNTY, PENNSYLVANIA
3	V.	:
4	ELMER L. BOWMAN	: No. 63 MD 2010
5	BRETT O. FEESE	: No. 65 MD 2010
6	DONALD H. McCLINTOCK	: No. 66 MD 2010
7	JOHN M. PERZEL	: No. 64 MD 2010
8	BRIAN J. PRESKI	: No. 62 MD 2010
9	ERIC S. RUTH	: No. 69 MD 2010
10	JILL A. SEAMAN	: No. 68 MD 2010
11	SAMUEL C. "BUZZ" STOKES	: No. 67 MD 2010
12	PAUL E. TOWHEY	: No. 70 MD 2010
13	JOHN R. ZIMMERMAN	: No. 61 MD 2010
14	·	
15	TRANSCR	RIPT OF PROCEEDINGS
16	PREL	IMINARY HEARING
17		VOLUME I
18	BEFORE: HONO	RABLE WILLIAM C. WENNER
19	DATE: TUES	DAY, MAY 25, 2010
20	PLACE: COUR	TROOM NO. 1
21	HARR	HIN COUNTY COURTHOUSE ISBURG, PENNSYLVANIA
22	APPEARANCES:	
23	K. KENNETH BROWN, II, MICHAEL A. SPROW, ESQ	ESQUIRE
24		
25	For - Commonweal	th
		rent tree to the Qu.

1	APPEARANCES CONTINUED:
2	
3	DONNA J. McCLELLAND, ESQUIRE
4	For - Defendant Bowman
5	JOSHUA D. LOCK, ESQUIRE
6	GOLDBERG KATZMAN, P.C.
7	For - Defendant Feese
8	SCOTT P. SIGMAN, ESQUIRE
9	For - Defendant McClintock
10	BRIAN J. McMONAGLE, ESQUIRE FORTUNATO N. PERRI, JR., ESQUIRE
11	McMONAGLE, PERRI, McHUGH & MISCHAK, P.C.
12	For - Defendant Perzel
13	WILLIAM J. WINNING, ESQUIRE MEGAN S. SCHEIB, ESQUIRE
14	COZEN O'CONNOR
15	For - Defendant Preski
16	EVAN J. KELLY, ESQUIRE Goldberg, Meanix & Muth
17	For - Defendant Ruth
18	WILLIAM FETTERHOFF, ESQUIRE
19	For - Defendant Seaman
20	ROBERT DONATONI, ESQUIRE
21	For - Defendant Stokes
22	TIMOTHY WOODWARD, ESQUIRE
23	LAW OFFICE OF TIMOTHY WOODWARD
24	For - Defendant Towhey
25	THOMAS A. BERGSTROM, ESQUIRE
	For - Defendant Zimmerman

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(On Tuesday, May 25, 2010, the following
1
2
   proceedings occurred, beginning at 9 a.m.:)
3
4
          THE COURT: Everybody ready to go? We'll
5
   get started.
           I guess just as a preface, I was warned
6
7
   that the air conditioning for this courtroom
   might be trouble today, so I'll tell the
8
   attorneys, if anybody wants to take their jackets
9
10
   off, please relax.
11
           If the Commonwealth is ready, you can
12
   call your first witness.
13
           MR. SPROW:
                       Thank you, Your Honor.
                                                The
14
   Commonwealth calls Lori Lochetto.
15
16
                     LORI LOCHETTO,
   called as a witness, being duly sworn, testified
17
18
   as follows:
19
                       Ma'am, I'll need you to pull
20
           THE COURT:
   that microphone toward you and you'll have to
21
22
   stay relatively close to it. Keep your voice up
23
   so the attorneys in the back can hear you.
24
25
```

#### 1 DIRECT EXAMINATION 2 BY MR. SPROW: 3 Good morning, Ms. Lochetto. Could you Q 4 please tell your name for the record and spell 5 both your first and last name? 6 Α Lori Lochetto. THE COURT: | Pull that microphone closer 7 8 to you. Get close to it. THE WITNESS: L-O-R-I, L-O-C-H-E-T-T-O. 9 BY MR. SPROW: 10 11 Going back to the time frame of 1995 Q 12 through 2008, where were you employed at that 13 time? 14 Α In the House of Representatives, the 15 Republican Caucus. Who did you work for? 16 Q 17 Α John Perzel In what capacity? 18 Q 19 Α I started out as a secretary and 20 progressed up. 21 MR. FETTERHOFF: Ms. Lochetto, that microphone is flexible and you can bend it toward 22 23 you. Together with that, I would be grateful if 24 you kept your voice up, because back here it's 25 difficult to hear.

```
BY MR. SPROW:
 1
           You said you started out as an
 2
   administrative assistant?
 3
 4
       Α
           Yes.
 5
           And moved on to what position?
 6
       Α
           I did the floor coordination, so I did a
 7
   lot of legislative -- I don't know how to explain
        Things related to the floor.
 9
       Q
           Your ultimate boss during that time frame
10
   was Representative Perzel, correct?
11
       Α
           Yes.
12
           And who else did you work for?
       Q
13
       Α
           I worked for the Chief of Staff
   basically, Tom McCormick was the first and then
14
   Brian Preski came in and then Paul Towhey.
15
16
       Q
           Going to the time frame of 2008, who was
   Chief of Staff for Representative Perzel at that
17
   time?
18
19
           Paul Towhey.
       Α
           And where were you located? Where was
20
       Q
21
   your office located?
22
           Room 414, Main Capitol.
       Α
23
           Who all was in that office at that time,
       0
24
   if you could tell us?
25
       Α
           We had a receptionist and then it was
```

```
8
```

```
1
   myself, John Zimmerman, Paul Towhey and John
 2
   Perzel.
       Q
 3
           So --
 4
 5
           (Noise outside the courtroom.)
6
7
           MR. FETTERHOFF: This is not going to
8
   work.
9
10
           (There was a pause.)
11
12
   BY MR. SPROW:
           Room 414 in the Main Capitol, you said
13
       Q
   it's John Perzel, yourself, Paul Towhey and who
14
15
   else?
16
       Α
           John Zimmerman and we had a receptionist.
17
       Q
           And what was the receptionist's name?
18
       Α
           Mozey Popp (phonetic).
19
           That's a female?
       Q
20
       Α
           Yes.
21
           Anybody else in the office at that time,
       Q
22
   2008, February 2008 specifically?
23
       Α
           No.
24
       Q
           During the week of February 25th to the
   29th of 2008, during that time frame did you have
25
```

- 1		
1	Α	Correct.
2	Q	And just to stop the progression of that
3	story 1	for a second, Room B-2 is what? What is it
4	used fo	or?
5	Α	It's a storage room.
6	Q	And did you have access to that room?
7	Α	Yes.
8	Q	Was it kept as a secure room or could
9	anybody	go in it at any time?
10	Α	It was locked.
11	Q	And how was it that you had access to it?
12	Α	I had a key
13	Q	Now, Jason Weiser advises you that there
14	are so	me boxes in that room with campaign
15	materia	al. What do you do upon learning that?
16	Α	I called Paul Towhey to tell him of the
17	conver	sation.
18	Q	And Paul Towhey, you indicated, was John
19	Perzel	's Chief of Staff at the time?
20	Α	Correct.
21	Q	What was the conversation with Paul
22	Towhey'	?
23	Α	I just told him what Jason had told me.
24	Q	And what did Mr. Towhey say?
25	Α	He asked me to go down to the room to see

1 exactly what was there, because we weren't sure 2 what he was talking about as to what was there. Did you do that? 3 Q 4 Α Yes. 5 Q And what did you find? 6 Α I went through and there was a stack of 7 boxes that did have campaign stationery in it. 8 Q What did you do at that point? I came back to the office and I called 9 Α 10 Paul to tell him what exactly was there. 11 Okay. And when you say what exactly was Q 12 there, you told him that you found campaign 13 materials? 14 Yes. · A What did Mr. Towhey tell you at that 15 Q 16 time? 17 Α He just said that we should have the 18 items brought up to the office and to go through 19 it just to see -- because there was a lot of 20 boxes. And we just kind of went through the 21 first top boxes to see what was in each of the 22 boxes. 23 So we had the boxes brought up to the office, and then I went through them and sorted 24 25 out what was the stationery and what was not

```
1
   campaign related.
2
           Okay.
                 And that was at Mr. Towhey's
3
   suggestion?
       Α
           Yes.
4
5
       Q
           When you say you brought them up to the
6
   office, are we still talking about Room 414 of
7
   the Main Capitol?
8
       Α
           Yes.
9
           After you went through sorting out the
       Q
10
   campaign material from the non-campaign material,
11
   what happened?
12
       Α
           I believe that I just called Paul just to
   say this is what is exactly here and --
13
14
       Q
           What did he say?
15
       Α
           He just -- he asked me to have the
16
   campaign material taken over to HRCC.
17
       Q
           Okay.
                  Did you arrange for that to
18
   happen?
19
       Α
                 I called the messengers.
20
       Q
           And they took the campaign materials
21
   where?
22
       Α
           Over to HRCC.
23
       Q
           During this time frame, that week of
24
   February 25th to the 29th, 2008, were you aware
25
   that there was an Attorney General investigation
```

3

4

6

7

9

10

11 12

13

14

15 16

17

18

19 20

21

22

23

24

25

going on regarding the Legislature at that time?

- Α Yes.
- Q How were you aware?

Α It was in the news, just that the -- and it was basically the Democratic Caucus that was in the news.

Describe for us the layout of the office Q there in Room 414. You told us a little while ago who worked in there, and I'm talking still about February 2008. How is the office laid out?

When you come into the complex, there's a large reception area and then you would go through a doorway and it came into an office where John Zimmerman and I sat.

And then off to the left was another office where Paul Towhey sat. And then off to the right was John Perzel's office.

Q Okay. So when you come in the door, there's an initial area where the receptionist is. You go through another door to a second room?

- Α Yes.
- That's where you and John Zimmerman are? Q
- Α Yes.
- Q And then there are two private offices

```
1
   for John Perzel and Paul Towhey past there?
 2
       Α
           Yes.
 3
       Q
           When you had the messengers bring the
 4
   boxes in, did you take them right through those
   doorways?
 5
 6
       Α
           I believe, ves.
 7
       Q
           And ultimately where were those boxes
8
   put, the ones that were not taken to the HRCC?
9
       Α
           In John's office.
10
       0
           John Perzel?
11
       Α
           Yes.
12
           Was there anything that would have
       Q
   obstructed the view from John Zimmerman's desk to
13
   where the boxes would have come through when the
14
15
   messengers brought them in?
16
       Α
           No.
17
           What was John Zimmerman's job at that
       Q
18
   time?
19
           He was the scheduler.
       Α
20
           For Representative Perzel?
       Q
21
       Α
           Yes.
22
           And did that job require him to be up and
       Q
   about on a regular basis or was he mostly at his
23
24
   desk?
25
       Α
           Mostly at his desk.
```

```
That Friday of that week that we've been
1
      , Q
   talking about, the 29th, were you at work on that
 2
3
   day?
 4
           No, I was on vacation.
5
       Q
           Do you see Paul Towhey in the courtroom?
           MR. WOODWARD: I'll stipulate.
6
7
           THE WITNESS:
                          Yes.
8
           THE COURT:
                        Thank you.
   BY MR.
9
           SPROW:
10
           And what about John Zimmerman?
       Q
11
       Α
           Yes.
12
           Can you just point him out for the Judge?
       Q
13
       Α
           Sitting (indicating).
14
       Q
           What's he wearing?
15
       Α
           John Zimmerman has a red shirt on and
   tall.
16
17
           THE COURT:
                        Thank you.
18
           MR. SPROW:
                       Those are all the questions I
19
   have, Your Honor.
           MR. McMONAGLE: May I?
20
21
           THE COURT:
                        Yes.
22
23
                    CROSS EXAMINATION
24
   BY MR. McMONAGLE:
25
       Q
           Hi, Ms. Lochetto.
```

```
1
      Α
           Ηi.
           I'm Brian McMonagle. I represent John
2
       Q.
3
   Perzel. Just a couple of questions.
4
           Let me focus really on the issue at hand.
   You tell us that at some point in time, I think
5
   it's -- do you know the date? Was it February
6
   the 25th?
7
8
      Α
           Monday.
       Q
           And you get a call from somebody, a guy
9
   named Jason Weiser?
10
11
       Α
           Correct.
12
           Who is Jason Weiser?
       Q
          He works for Representative Phillips.
13
       Α
14
       Q
           He works for who?
15
      Α
           Representative Phillips.
16
       Q
           So Jason Weiser, who works for
17
   Representative Phillips, calls you and he says
18
   what to you?
           He told me that he -- they were moving
19
20
   items from B-2 because they were doing
21
   construction in the room.
22
       Q
           All right. Let me stop you there.
   They're moving items from B-2 because they're
23
   doing construction, correct?
24
25
      Α
           Yes.
```

And the they is who? Who is doing the 1 Q 2 construction? You don't know? 3 I don't know. So he tells you there's construction 4 Q being done and they're going to remove some 5 6 boxes. And what else does he tell you? 7 Α In the process of them being in the room, his Democratic counterpart was there as well as someone from the Chief Clerk's office, and that 9 10 his Democratic counterpart was looking through 11 some of the boxes and found campaign-related 12 items. 13 Do you know who the Democratic Q 14 counterpart was? 15 Α Julie. 16 Q Somebody named Julie? 17 Α Yes. So Julie from the Democrats and this 18 Q other fellow is down there, and they're moving 19 boxes because of construction; and according to 20 Mr. Weiser anyway, they find some campaign 21 22 material, correct? 23 Α Yes. 24 And when he tells you that, what do you Q 25 say?

```
1
      Α
           I wasn't aware of it.
 2
           Right. You didn't know it was there,
       Q
3
   correct?
      Α
           No.
 4
 5
       Q
           You had a key to the location, correct?
           Right.
6
       Α
7
           Describe the room for me. Is it a big
       Q
8
   room?
9
           Yes, relatively.
       Α
10
       Q
           Pretty big room, lots of boxes?
11
       Α
           Yes.
12
       Q
           Boxes closed up?
13
       Α
           Um-hmm.
14
       Q
           So I take it you've been in that room
15
   before?
16
       Α
           Yes.
17
           Completely unaware that the campaign
       Q
   material was in there, correct?
18
19
       Α
           Yes.
           And when he tells you that, you know,
20
       Q
21
   we're getting this stuff ready because we're
   going to relocate some stuff because of
22
23
   construction, we found some campaign material,
24
   what's the next thing that happens?
25
      Α
           I called Mr. Towhey to tell him that --
```

```
1
   of the conversation.
2
           And what's Mr. Towhey say?
       Q
3
      Α
           He asked me to go see what was in the
4
   room.
5
       Q
           Okay. So you tell Mr. Towhey about the
   conversation and Mr. Towhey says -- he obviously
6
7
   doesn't know anything about it, correct?
8
      Α
           That's correct.
9
       Q
           So he's as surprised as you are, correct?
10
      Α
           Yes.
11
          And he says, hey, go ahead down there and
       Q
12
   check it out?
13
      Α
           Yes.
14
       Q
           And you do that?
15
       Α
           Yes.
           And when you go down there and check it
16
       Q
17
   out, what do you find?
18
           There are some boxes of campaign
19
   stationery there.
           Stationery?
20
       Q
21
      Α
           Yes.
22
      Q
           Can you be more specific?
23
      Α
           It was -- describe it or just --
24
      Q
           Was it stationery?
25
           Well, it was Victory. It was Victory '04
      Α
```

```
1
   stationery.
2
       0
           '04?
3
       Α
           Yes.
4
       Q
           And we're now in 2008 when this happens.
5
   right?
6
      Α
           Correct.
           Okay. So there's some old stationery
7
       Q
8
   down there and what do you do?
9
      Α
           I came back up to tell -- call Paul to
   tell him what it was.
10
           You have to now tell Paul what it is,
11
       O.
12
   because he's obviously telling you he doesn't
13
   know what it is?
14
       Α
           Correct.
15
       Q
           What happens when you tell Paul that
   there's 2004 stationery down there?
16
17
       Α
           He just asked me to have the boxes
18
   brought up to the dffice, and then I sorted
   through them because --
19
20
       Q
           Bring them up and sort them out?
21
       Α
           Right.
22
           And you do that, correct?
       Q
23
       Α
           Right.
24
       Q
           And when you brought them up and sorted
   them out, how did you get them up there?
25
```

1 Α Called the messengers. 2 Called a messenger. So you call a 3 messenger, bring them up, right? Let's sort it 4 out. You're not sheaking around with boxes or 5 anything, right? 6 Α No. 7 You brought them upstairs as you were Q told to do and you sorted them out? Α 9 Yes. Tell me about the sorting. What was in 10 Q 11 the boxes? 12 Well, there was campaign -- the stationery, envelopes. There were some items 13 14 that weren't campaign-related. 15 Like what? Q There were some cards that we had had 16 printed that just had the House seal on them. 17 18 Q Okay. 19 Α Those are the only things that I can 20 specifically remember. 21 And then you sort the materials, I Q 22 take it, and you mentioned that some of the boxes 23 were then removed and placed somewhere else? 24 Α Yes. Tell me what happened. 25 Q

```
I called Paul to tell him what exactly
1
       Α
   was there, sorted it; what was campaign, what was
2
3
   not campaign.
4
       Q
           Okay.
           And he just said, well, the campaign
5
   stuff shouldn't be here, just send it over to
6
   HRCC.
7
8
           He tells you the campaign stuff shouldn't
       Q
   be here, because he told you he didn't know it
9
   was even there?
10
11
       Α
           Right.
12
       Q
           Send it over to the HRCC?
           Right.
13
       Α
14
           And do you do that?
       Q
15
       Α
           Yes.
           Now, my colleague asked you whether or
16
       Q
   not you had been aware at that point in time that
17
18
   there was some kind of investigation going on.
   You had said you heard about it in the news,
19
20
   correct?
21
       Α
           Yes.
22
       Q
           An investigation into the Democratic --
   some activity of some kind, correct?
23
24
       Α
           Yes.
           That had nothing to do with you moving
25
       Q
```

```
1
   those boxes, did it?
      Α
2
           No.
3
           MR. McMONAGLE: I have nothing further --
4
   one last question -- thank you.
5
                    CROSS EXAMINATION
6
7
   BY MR. WINNING:
8
      Q
           Ms. Lochetto, I represent Brian Preski.
   I just have a few questions.
9
10
           Your attention was directed to February
11
   of 2008, and you were asked a lot of questions
12
   about this brief period of time, February of
13
   2008. At that point in time, correct me if I'm
14
   wrong, but Brian Preski was no longer employed in
15
   any capacity by the caucus, correct?
16
           That's correct.
17
           He had left the caucus, he had left the
       Q
   employ of the caucus in early January of 2007?
18
19
      Α
           Correct.
                       So he was not in the caucus,
20
      Q
           All right.
   he was not in Harrisburg, he had -- he was not in
21
22
   any way connected to what you described in
23
   February of 2008?
      Α
           Correct.
24
25
           MR. WINNING:
                         Thank you.
```

2

3

4

5

6

7

8

10

11

12

13

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15

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17

18

19

20

21

22

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24

25

## CROSS EXAMINATION

BY MR. LOCK:

Q Ms. Lochetto, my name is Joshua Lock. I represent Brett Feese.

Do you recall, ma'am, how many boxes which contained campaign materials were brought to you from the basement of the Irvis Building?

How many boxes actually had campaign Α material?

Yes. ma'am.

There were several. I don't know the specific count. I know there was a handcart that they had them on so there were --

Regardless of the number of boxes, the Q contents of each was as you described it when you responded to Mr. McMonagle's questions about the nature of the political material contained in those boxes; isn't that right?

Α Yes.

Q Did you provide instructions, ma'am, to anyone to shred any of the so-called campaign materials contained in the boxes brought up to your office?

Α No.

Q Was it you who called for the messengers

4

5 6

7

8 9

10

11

12 13

14

15

16

17

18 19

20

21

23

22

24

25

on February 27th, 2008, to remove the boxes containing the ostensible campaign materials to HRCC?

Α Yes.

Q When you put in a request for messenger services, do you speak to somebody directly or do you submit that request in writing?

I just called the messenger office. Α

Q I noticed that in the log that the messenger service keeps, there's a column for -that is captioned rush. You can put yes or no.

You indicated that there was no rush with respect to the transmittal of those boxes from one side of Third Street to the other side: isn't that right?

I don't recall saying it was a rush. Α

Q Were you present when the messengers arrived to pick up the boxes for delivery to HRCC?

Α Yes.

Did you see how many boxes they took Q across the street?

I showed them which boxes needed to go, Α so yes.

Q All right. Earlier -- to some extent

MR. DONATONI: Good morning, ma'am.

```
1
           I have no questions, Your Honor.
 2
           MS. McCLELLAND: No questions.
 3
           MS. KELLY:
                       No questions from Mr. Ruth,
   Your Honor.
 4
 5
 6
                    CROSS EXAMINATION
 7
   BY MR. WOODWARD:
           Ms. Lochetto, when was Mr. Tomaselli
8
       Q
9
   Chief of Staff?
10
           I don't know that he ever held that
   title. I mean, he came to the office when we
11
12
   moved upstairs after John lost the speakership.
13
       Q
           Did he pretty much run the show or act as
   the Chief of Staff for a period of time?
14
           Yes, I guess so, yes.
15
       Α
16
       Q
           Now, ma'am, when you found this material
17
   in B-2, you called Mr. Towhey, correct?
18
       Α
           Yes.
19
           To alert him of what you had found?
       Q
20
       Α
           Yes.
21
       Q
           And he seemed surprised, didn't he?
22
       Α
           Yes.
23
           And he told you to get that material over
       Q
24
   to HRCC, true?
25
       Α
           Yes.
```

```
1
       Q
           He never told you to keep your mouth
 2
   shut, did he?
 3
       Α
           No.
           He never told you to shred the material,
 4
       Q
 5
   did he?
       Α
 6
           No.
 7
           He never told you to hide material, did
       Q
 8
   he?
9
       Α
           No.
10
           He never told you to lie about the
       Q
11
   material, did he?
12
       Α
           No.
13
           By the way, Mr. Towhey that entire week
14
   was in Philadelphia, wasn't he?
15
       Α
           Correct.
16
       Q
           So he never saw what was in the boxes,
   did he?
17
18
       Α
           No.
19
                           Nothing further.
           MR. WOODWARD:
20
           MR. SIGMAN: No questions, Your Honor.
21
                        Thank you.
           THE COURT:
           MR. FETTERHOFF: No questions.
22
23
           MR. BERGSTROM: Your Honor, I just have
24
   maybe two.
25
```

### CROSS EXAMINATION 1 2 BY MR. BERGSTROM: 3 Q Ms. Lochetto, can you tell us exactly the day during the week of February 25th that these 4 5 boxes were moved? I believe it was Wednesday. 6 Α 7 Q Which would be what date? 8 Α You mean moved to HRCC? Yes. 9 0 10 Α I believe it was Wednesday. 11 And you testified, I believe, that you Q 12 were not working on the 29th, correct? 13 Α On that Friday, yes. 14 MR. BERGSTROM: That's all I have. 15 THE COURT: Thank you. 16 Any redirect? MR. SPROW: No, Your Honor. 17 THE COURT: You may step down. Thank you 18 19 very much. 20 21 (Witness excused.) 22 23 MR. BROWN: Sheila Flickinger is next. There will be a brief delay while she comes in. 24 25

```
1
           (There was a pause.)
2
3
                   SHEILA FLICKINGER,
4
   called as a witness, being duly sworn, testified
5
   as follows:
6
7
           THE COURT:
                       Ma'am, for the sake of the
   attorneys that sit at the back of the room,
8
   you've got to speak loudly into that microphone
9
10
   so stay close to it.
11
           THE WITNESS:
                         Okav.
12
           THE COURT:
                       Thank you.
13
14
                   DIRECT EXAMINATION
   BY MR. BROWN:
15
16
           Good morning, ma'am. Could you state
       Q
   your name for the Judge and the record and spell
17
18
   your last name, please.
19
       Α
           Sheila Flickinger, F-L-I-C-K-I-N-G-E-R.
20
       Q
           Ms. Flickinger, did you have or do you
21
   have any affiliation with something called the
22
   House Republican Campaign Committee or HRCC?
23
                 I'm the finance director.
       Α
           How long have you been affiliated with
24
       Q
   HRCC?
25
```

A Since 1987.

Q What sorts of things does your current job title include or your job responsibilities include for the HRCC?

A I set up fundraisers and I do the bookkeeping.

Q I want to turn your attention back to the time frame between the end of 2000 through at least the end of 2007. Were your job titles -- or were your job duties the same or different during that period of time?

A Basically the same.

Q Did your job duties include working with, say, a budget for the HRCC?

A Yes.

Q Did your job duties include recording income and expenditures done by the HRCC?

A Yes.

Q The expenditures of the HRCC, is that something that pursuant to law has to be reported somewhere?

A Yes, it needs to be reported to the Department of State periodically throughout the year.

Q And there are set schedules that

Α Right.

22

23

24

25

1

- -- it has to be reported? Q
- They would pay for the food and the Α beverages, and they would let you know how much it cost and you would report that on your

```
campaign finance report.
 1
 2
           And are in-kind contributions something
 3
   that the HRCC would have to report to the
 4
   Department of State?
 5
       Α
           Yes.
 6
       Q
           Now, Ms. Flickinger, are you familiar
 7
   with a company or a vendor called GCR?
 8
       Α
           Yes.
 9
       Q
           And at some point, I believe it was early
   2003, GCR enters into a contract with the HRCC;
10
   is that right?
11
12
       Α
           Correct.
13
       Q
           How did that come about?
14
           They provide data services. It was -- I
15
   believe they had a contract on the Hill, and we
16
   started using their data services.
17
       Q
           What was the amount of the contract
18
   between GCR and the HRCC when it's first
19
   implemented in 2003?
20
       Α
           It was a thousand dollars a month.
21
       Q
           And how was that amount of money per
22
   month determined?
           I'm sorry, what's that?
23
       Α
           How was that thousand dollars a month
24
       Q
   determined, that that's what the HRCC was going
25
```

to pay?

A It was decided that we should pay a certain amount per month as a retainer, and that was the amount that was come up with.

Q All right. Let's talk about some of this in a little more detail. Did GCR provide any services to HRCC before the contract was entered into in the beginning of 2003?

A I don't recall.

Q When the contract is entered into or, I guess, the discussions leading up to the contract for a thousand dollars a month, when did you first hear about the fact that there is or was going to be a contract between GCR and the HRCC?

A It came up at one of our regularly scheduled meetings that we held at HRCC, either a Monday or a Tuesday morning, usually weekly or biweekly.

Q And who were the people that would usually attend these weekly updates during that period of time?

A It was me, John Hanley, Brett Feese, Steve Dull, Jill Seaman, Al Bowman, John Perzel, Brian Preski. Sometimes when John Perzel or Brian couldn't attend, they would call in

1 conference. 2 And I'm going to ask you -- I know you're 3 doing a good job so far, but to get over the saw you may have to keep your voice up while that's 4 5 going on. Okay? 6 Α Okay. 7 THE COURT: Mr. Fetterhoff, do you need 8 anything repeated prior to the saw? MR. FETTERHOFF: Thank you. 9 10 BY MR. BROWN: 11 Q Now, this amount of a thousand dollars a 12 month based on the discussions that you heard at 13 these meetings, was that something -- was that 14 amount coming from GCR or was that something that 15 was determined by the HRCC that they had to pay? 16 How did this come up? 17 I'm not exactly sure who brought it up. Α It could have been John Hanley or Brett. I don't 18 19 remember, but it was at one of the meetings it was decided that we needed to start paying them 20 21 something. 22 Q Are you familiar with a GCR product 23 called Candidate Connect? 24 Α Yes.

And was Candidate Connect a program that

25

Q

was used by the HRCC?

2

Α Yes.

3 4

0 Candidate Connect used by the HRCC?

6

5

7 8

9

10

11

12 13

14

15

16

17 18

19

20 21

22

23

24

25

And what -- in what way or ways was

Α It was a program that was given out to candidates and some members that were running for reelection for them to have databases and do their campaign expense reports.

It was -- they could use their street lists. They could do communications through it. It was a really good program.

To the best of your knowledge, was the Q development of Candidate Connect paid for under the thousand dollars a month contract with GCR or under another contract?

MR. FETTERHOFF: Objection. It's beyond the knowledge of this witness unless there's a foundation. If there's a foundation, it might be proper, but it's hard to tell at this moment. But I think the question to this witness in the present context has insufficient groundwork.

MR. BROWN: Your Honor, I've indicated that it's based on her knowledge and experience. If she knows, she knows. If she doesn't know, she doesn't know.

THE COURT: | I'll allow her to answer. 1 2 THE WITNESS! I'm really not sure how it 3 was started. 4 BY MR. BROWN: 5 Q At some point during your tenure, and I believe it's mid-2002 or thereabouts, Brett Feese 7 becomes the member in charge of the HRCC? Α That's correct. What sort of management style did Mr. 9 Q 10 Feese have when he was in charge of the HRCC? 11 Α He was a hands-on person. He wanted to 12 know exactly where things -- you know, how we 13 were spending our money. Was very involved with 14 how we -- you know, our budgets and what was 15 going on. 16 Q Would you have discussions with Mr. Feese 17 about particular vendors or budget items as to 18 how much particular vendors were being paid? 19 He knew what we were spending. would periodically make up an accounts payable 20 21 listing showing exactly what vendors we needed to 22 pay and the amount! A lot of times when I would do it, it would be a signal to show. 23 24 I would also show what our cash balance was at that time, so it would kind of be a signal 25

2

3

4

5 6

7

10

11

12

13

14

15

16 17

18

19

20

21 22

23

24

25

to tell them we need to raise some money.

Now, let's stick with the contract between GCR and the HRCC. You testified that it began at a thousand dollars a month?

Α Yes.

Q Does that amount ever change?

Α It did change. I'm not exactly sure of the date, but at some point it was discussed at one of our meetings that because of the amount of time -- the amount that -- that we were using GCR, that we probably needed to start paying them an additional -- additional money.

Q To the best you can recall, who was present for that meeting where the talk that we have to up the amount we're paying GCR was discussed?

Α It was Brett Feese, Jill, me, John Hanley, Steve Dull and Al Bowman. I can't remember if Brian Preski or John was there or not or if they had called in.

Q If you recall, who broached the subject of we have to start paying GCR more?

Α It was either John Hanley or Brett.

Q And based on your knowledge of the fact we have to pay them more based on those

```
1
   conversations that you heard and participated in,
   was this coming from GCR, that GCR was asking for
2
3
   more money, or was this change in amount coming
   from another source?
4
          I thought it was brought up -- it was
5
   brought up at the meeting. It was something that
6
7
   was decided among the group, that that was what
8
   we needed to do.
      Q
          So based on your -- on the discussions at
10
   the meeting, it didn't come from GCR?
11
           I don't believe so.
      Α
12
          The person that you've been discussing as
      Q
13
   Brett Feese, do you see him in the courtroom
14
   today?
15
      Α
          There he is, yes.
16
           MR. BROWN: I ask the record reflect the
   witness has identified the Defendant.
17
18
   BY MR. BROWN:
19
    Q
          Do you see Jill Seaman in the courtroom
20
   today?
21
           MR. FETTERHOFF: Stipulated.
           THE WITNESS: Yes.
22
                       Thank you, Mr. Fetterhoff.
23
          MR. BROWN:
   BY MR. BROWN:
24
          The person you identified as John Perzel,
25
      Q
```

```
1
   do you see him in the courtroom today?
2
      Α
           I don't have my glasses on.
3
           MR. McMONAGLE:
                           He's right here.
4
           THE WITNESS:
                         Okay. Yes.
5
   BY MR.
          BROWN:
           Same question for Brian Preski?
6
      Q
7
      Α
           Yes.
           Now, Ms. Flickinger, I also want to ask
8
       Q
9
   you about another company or another vendor
10
   called Aristotle International. Are you familiar
11
   with that vendor?
12
       Α
           I know the vendor.
           During the period from 2001 through the
13
       Q
   end of 2007, did Aristotle International have a
14
15
   contract with the HRCC?
16
       Α
           No.
17
           As the head of the HRCC for a portion of
       Q
18
   that time, would Feese have been aware that the
19
   HRCC isn't paying Aristotle any money?
20
       Α
           Yes.
           Are you familiar, Ms. Flickinger, with
21
22
   another vendor, another company called Labels &
   Lists?
23
       Α
24
           Yes.
           For the time period we're talking about
25
```

1 here from 2001 through the end of 2007, did the HRCC have a contract with Labels & Lists? 2 3 We did not. 4 Q During that same period of time, even if there wasn't a contract, were there purchases made from Labels & Lists by HRCC? 6 7 Α We made several purchases for data just 8 for separate house races. If you recall, what type of money are we 9 Q 10 talking about for these discrete purchases of 11 data from Labels & Lists? 12 Α A thousand, maybe two thousand dollars. 13 Q And the thousand or two thousand dollars, 14 is that the floor or the ceiling as to what you 15 recall paying out? 16 Α I think that was the ceiling. Are you familiar with another company or 17 Q 18 vendor that went by various names, including Artists Forum, Constituents Direct and 19 20 iConstituents? 21 Α Yes. 22 Did -- again, for the time frame that 23 we're talking about here, did Constituents Direct 24 or any other name in that regard have a contract

25

with the HRCC?

In 2003 and 2005, we had a contract with 1 2 Constituents Direct. 3 And that contract, if you know, was to Q provide what kind of services? 4 5 Α E-mail services. 6 What was the price for that contract, if Q 7 you recall, or how was it paid? It was paid monthly. It was \$1890 a 8 Α month. 9 10 Did the \$1890 change at any point? 11 At one point it went up 48 cents. I 12 remember them joking about it, you know, I wonder 13 why they raised the price. 14 For the period of time that Constituents 15 Direct had a contract with the HRCC, did the 16 amount of work that Constituents Direct performed stay the same, increase or decrease? 17 18 I'm really not sure because I didn't 19 really deal with it. 20 Q Who did? 21 Α Mainly it was Al Bowman. Now, Ms. Flickinger, I want to jump ahead 22 Q in the time line to the last week of February of 23 2008, specifically the time period between 24 25 February 25th and 29th of 2008.

1 Α Okay. You're still employed by the HRCC at that 2 Q 3 time? Α Yes. 4 5 Q At some point in that week, to cut to the chase a little bit here, do you get a call about 6 7 whether a delivery was received? 8 Α Yes. Q And from whom do you get a call like 10 that? 11 Α I had a call from Brett Feese, and he asked me if there was a delivery made from the 12 13 Hill. And I said I didn't know, that I would 14 have to check. I went out to check with George Matthews, 15 16 who was sitting at the front desk, and I asked him if a delivery had been made from the Hill. 17 18 He said yes. And he pointed to -- he said, yeah, 19 it's over there, and he pointed to some boxes. 20 So I went over and looked in it and it 21 was campaign stationery. It was John Perzel Victory stationery. It was blank stationery and 22 23 envelopes. 24 And then I went back to the phone and I 25 told Brett what was in it. And he said not to do

```
1
   anything -- he said, don't touch them, just leave
2
   them where they are, and we did.
3
          Let me ask you a couple more questions
      Q
   about that. When Mr. Feese calls you, he just
4
5
   says, is there a delivery or did you get a
6
   delivery from the Hill essentially?
7
      Α
          Well, I mean, he said, Sheila, this is
   Brett, I mean, and then he asked me.
8
      Q Okay. And did you recognize Mr. Feese's
9
   voice when he said, hey, this is Brett?
10
          Well, yeah.
11
      Α
           So he says essentially, Sheila, this is
12
      Q
13
   Brett, did you get¦a delivery; you meaning HRCC,
14
   I guess?
15
      Α
          Yes.
16
      Q
           Get a delivery from the Hill?
17
      Α
          Yes.
           And that's when you go out and talk to
18
      Q
   this George Matthews?
19
20
           Correct.
      Α
           Who is George Matthews and how does he
21
       Q
22
   figure into this?
           George was the office -- he helped us in
23
   the office and he was at the front desk, so he
24
   accepted deliveries that were made to the office.
25
```

	l la companya di managantan di managantan di managantan di managantan di managantan di managantan di managanta
1	Q And based on what Mr. Matthews tells you,
2	he points you to a bunch of boxes and says,
3	that's the stuff that came over?
4	A Correct.
5	Q How many boxes are we talking about?
6	A There were a couple big brown boxes and
7	then some white envelope boxes. I'm not exactly
8	sure how many. Four maybe, five.
9	Q And the four or five, that includes both
10	the brown boxes
11	A Yes.
12	Q and the smaller envelope boxes?
13	A Yes.
14	Q And I guess while Feese is either on hold
15	or you put the phone down, you actually check to
16	see what's in the boxes?
17	A Correct.
18	Q You said it was John Perzel's campaign
19	stationery. Do you remember anything more
20	specific about it?
21	A It was John Perzel Victory stationery
22	that was used for the Speaker's Ball, the Victory
23	portion of it.
24	Q And what about the envelopes?
25	A The same.

Q 1 Victory envelopes? 2 Α Yes. 3 Q Then you go back and report to Feese what you found? 4 5 Α Yes. 6 Q What exactly did you tell Mr. Feese when 7 you go back? What do you say? I just told him that it was blank 8 Α stationery from the -- from John's Victory fund 9 and also blank envelopes, unused envelopes. 10 11 Q And he says in essence? 12 Α Not to touch them, just to leave them 13 right where they were, which I did. 14 Q Now, Ms. Flickinger, I want to ask you 15 about another computer program, I guess called Landslide. Are you familiar with that? 16 17 Α Yes. 18 Q What is Landslide? 19 That's the data management program that 20 I've used since 1995 that -- that's where I enter 21 the contributions that are made to HRCC and all 22 expenditures that are made, and that's -- then I 23 run the report from that for the Department of 24 State. 25 Were you asked by Agent Fiore to check Q

```
Landslide records for expenditures to particular
 2
   individuals or companies?
 3
      Α
           Yes.
           And did you prepare a short letter of
       Q
 4
 5
   your findings for that?
 6
      Α
           Yes.
 7
       Q
           And would you recognize that letter if
8
   you saw it again?
9
      Α
           Sure.
10
           Ms. Flickinger, you should be able to see
11
   it on the screen in front of you. That's been
12
   marked as Commonwealth's Exhibit No. 33 for
   identification. Do you recognize that?
13
14
      Α
           Yes.
           And is that a true and accurate copy of
15
       Q
   the report that you prepared?
16
17
       Α
           Yes.
           And, in essence, according to the records
18
       Q
19
   that you prepared -- and that's stuff that you do
20
   in the ordinary course of business, right?
21
   That's part and parcel of what you do?
22
      Α
           Yes.
           All of the people on that list, including
23
   John Perzel and Eric Ruth and Don McClintock on
24
25
   the first line, there were no expenditures for
```

```
1
   the following individuals?
 2
       Α
           That's correct.
 3
       Q
           That you redorded?
 4
       Α
           That's right.
 5
       Q
           And it also includes, for example, the --
6
   it also includes, for example, Weiss
   Micromarketing, right?
 7
8
       Α
           Correct.
           Ms. Flickinger, I'm also showing you
9
       Q
   what's been marked as Commonwealth Exhibit 34 for
10
11
   identification. This is an e-mail dated May 5th,
   2004, which is a Wednesday. Do you recognize
12
13
   this e-mail?
14
           Yes.
       Α
15
       Q
           And this is an e-mail from Paul Towhey at
16
   his House GOP e-mail account to an
17
   SFlick3116@aol.com?
18
       Α
           Yes.
           And do you recognize the e-mail address
19
20
   to whom this was sent?
21
       Α
           Yes.
22
       Q
           And whose is it?
23
       Α
           Mine. Well, it used to be mine.
24
       Q
           Used to be. The subject is Perzel
   request, and Towhey in this e-mail asks you for
25
```

```
1
   what?
 2
       Α
           He asked me for a list of the HRCC
 3
   $50,000 donors. They were -- John was getting
 4
   ready to do a fundraiser and he wanted to invite
 5
   them.
 6
           MR. BROWN:
                       Thank you, ma'am.
 7
           The Court's indulgence for a moment,
 8
   please.
 9
           THE COURT: Um-hmm.
10
11
           (There was a pause.)
12
13
           MR. BROWN:
                       Thank you. Tender for cross.
14
15
                    CROSS EXAMINATION
   BY MR. McMONAGLE
16
17
       Q
           Hi, Ms. Flickinger.
18
       Α
           Hi.
19
       Q
           I'm Brian McMonagle. I represent John
20
   Perzel. Just a couple questions.
21
       Α
           Okay.
           As I understand your testimony, you were
22
23
   Finance Director for the HRCC?
24
       Α
           Yes.
25
           And how long were you in that position?
       Q
```

```
Α
           I never really had a title --
 2
       Q
           Okay.
 3
           -- until actually I think it was Brett
   Feese who finally $aid, you know, with everything
 4
 5
   that you do, you should be Finance Director.
 6
       O
           A well-earned title.
           Who exactly did you report to if you, in
 7
   fact, reported specifically to anybody?
 8
 9
       Α
           Well, I reported to the Campaign
10
   Chairman, the Executive Director -- actually, I
   reported to all the members. I answered to all
11
12
   of them. But the primary person was obviously
13
   the Campaign Chairman or John Perzel.
14
      Q
           Okay. And you briefly spoke about some
   of your duties with the HRCC. You're certainly
15
   well aware that Mr! Perzel raised an enormous
16
17
   amount of money for the HRCC?
18
      Α
           He sure did.
19
       Q
           Can you estimate how much?
20
      Α
           Many millions.
21
           Many millions?
       Q
22
      Α
           Yeah.
23
           And the money that was raised and
       Q
   provided to the HRCC was certainly spent?
24
25
      Α
           Absolutely.
```

```
1
       Q
           And it was spent on many, many, many good
 2
   things; is that fair?
 3
       Α
           Yes.
 4
       Q
           Questions have been asked of you about
 5
   some of these computer vendors, for lack of a
 6
   better description.
 7
       Α
           Okay.
 8
       Q
           And you have fairly told us that at some
9
   point in time the HRCC began to pay for some
10
   technology?
11
       Α
           Yes.
         You told us that there was a meeting that
12
   occurred, and I'm sure it's a little vague since
13
14
   it happened years ago?
15
       Α
           Yeah.
16
       Q
           Fair?
17
       Α
           Yes.
18
       Q
           But you do remember a meeting and you do
   remember it was discussed at that meeting that
19
20
   the HRCC wanted to pay for technology
21
   specifically with GCR, correct?
22
       Α
           Yes.
           And you did that, correct?
23
       Q
24
       Α
           Yes.
25
       Q
           So here was a situation where money that
```

```
1
   had been raised, provided to the HRCC, was now
 2
   being used to pay, as best you remember it, GCR,
 3
   correct?
 4
       Α
           Yes.
 5
       Q
           You mentioned Candidate Connect, I
   believe. And would the same hold true with that,
   HRCC paying Candidate Connect?
      Α
           Well, it was supplied by GCR.
 9
       Q
           Okay. Then I want to be clear for the
10
   record. Since you were receiving Candidate
11
   Connect, it was supplied by GCR, it was decided
   that that technology was going to be paid for,
12
13
   correct?
14
       Α
           Yes.
15
           Did you tell us that, in fact, at some
16
   point in time the HRCC also began paying for
   Labels & Lists?
17
18
           No. Labels & Lists, as I recall, and I
19
   don't have the data right here in front of me,
   but I think we just paid -- we requested for
20
21
   several -- I'm going to say one or two House
22
   districts needed data.
           And I don't know if it was for polling or
23
   for a mailing, but for whatever reason, we went
24
   directly to them to get the data and we paid for
25
```

```
1
   it.
        It was not a contract. It was just like a
 2
   once and done -- actually, it was two or three
 3
   times that we did that.
      Q
           Gotcha. So since you were going to them
 4
 5
   for the data, you paid them for the data,
 6
   correct?
 7
      Α
           Yes.
           And did you also mention, was it
 8
      Q
 9
   Constituents Direct?
10
      A Yes.
11
           And was there a contract entered into
      Q
12
   with them?
13
      Α
           Yes.
14
          And the HRCC certainly paid them for the
   use of that technology, correct?
15
16
      Α
           Yes.
           All right. Now, let me shift gears a
17
      Q
   little bit, and I am going to wrap up because I
18
   don't know if anybody else has got some
19
20
   questions. They certainly may.
           You told us about this situation with the
21
22
   boxes?
23
      Α
           Yes.
           You got a call from -- was it Mr. Feese?
24
      Q
      Α
           Yes.
25
```

fairly tells you to just leave them where they

24

25

are?

```
1
      Α
           Correct.
 2
           MR. McMONAGLE: And that's your
 3
   testimony. Have a hice day.
 4
           MR. WINNING: Just a few questions, Your
   Honor, if I may.
 5
 6
           THE COURT: Yes, sir.
 7
8
                    CROSS EXAMINATION
   BY MR. WINNING:
9
           Ms. Flickinger, my name is Bill Winning.
10
      Q
11
   I represent Brian Preski in this matter. I just
   have a few questions for you this morning.
12
13
      Α
           Okay.
14
           MR. DONATONI: Bill, speak up. We can't
15
   hear you.
16
           MR. WINNING
                         Sure.
   BY MR. WINNING:
17
18
          My first question is, it's very fair to
      Q
19
   say here that John Perzel was able to raise an
   enormous amount of money from donors during the
20
   2000 to 2007, 2008 time period?
21
22
      Α
          Yes.
23
      Q
          And we're talking here about millions and
24
   millions of dollars, are we not?
25
      Α
          Yes.
```

```
1
   question in your mind that Brian Preski, as
2
   Mr. Perzel's Chief of Staff, would have known
 3
   exactly that fact?
 4
      Α
           Yes.
5
      Q
           There was no secret about that, was
6
   there?
 7
     . A
           No.
       Q
           It was open and notorious, and HRCC was
   extremely grateful for the willingness of
10
   Mr. Perzel to raise that money and contribute
   that money?
11
12
      Α
           Yes.
           Okay. And you know from your
13
       Q
14
   relationship with Brian Preski as Mr. Perzel's
15
   Chief of Staff that he was thoroughly familiar
16
   with the contributions made by the Friends of
17
   John Perzel to the HRCC?
18
       Α
           Yes.
19
       Q
           Okay. And you also went through a list
20
   of contracts and purchases that the HRCC had with
   Constituents Direct and Labels & Lists and GCR
21
22
   and the thousands of dollars that GC -- I'm
23
   sorry, the thousands of dollars that the HRCC had
   paid to those vendors, correct?
24
25
       Α
           Yes.
```

```
1
       Q
           Okay.
                  And certainly Brian Preski, as
   John Perzel's Chief of Staff, was aware of those
 2
 3
   contracts and aware of those expenditures; isn't
   that correct?
 4
 5
       Α
           Yes.
 6
           MR. WINNING:
                         Thank you very much.
 7
           THE COURT:
                       Thank you.
 8
           Mr. Lock.
 9
10
                    CROSS EXAMINATION
11
   BY MR. LOCK:
12
           Ms. Flickinger, my name is Joshua Lock.
       Q
13
   I represent Brett Feese.
14
           You were asked about the attention, among
   other things, the attention that Mr. Feese paid
15
16
   to the HRCC budget, the payment of bills and the
   like after he became Chairman. Do you recall
17
18
   that?
19
       Α
           Yes.
           It's true, is it not, that there were
20
       Q
21
   other people who paid attention to those same
22
   matters?
23
       Α
           Absolutely.
24
       Q
           Indeed, it's true, is it not, that
25
   Mr. Hanley prepared the budget for HRCC on an
```

1 annual basis after he became the Executive 2 Director? 3 Α He and I worked on it. And as the Executive Director, Mr. Hanley 4 Q 5 assumed the greatest responsibility among HRCC 6 participants in managing the budget and 7 overseeing expenditures; isn't that right? 8 Α Yes. You've been asked questions about 9 O 10 Mr. Perzel's -- Representative Perzel's generosity to HRCC on a couple of occasions 11 12 already. Do you recall those questions? 13 Α Yes. 14 Q Indeed, that generosity would become apparent, manifest itself, in a variety of ways; 15 such as, for example, direct contributions to 16 17 candidates, direct contributions to HRCC, 18 reimbursement to HRCC for expenses paid on behalf 19 of candidates or expenditures in campaigns, just a wide variety of matters; isn't that right? 20 Okay. I'm hot exactly sure what you're 21 Α 22 saying. 23 Q Well, you talked about Mr. Perzel's generosity. He didn't just write checks out from 24

time to time. Do you know who Mr. Karp is, a

25

```
1
   very wealthy benefactor from Philadelphia?
2
      Α
           Yes.
3
           Mr. Perzel from time to time would have
      Q
   Mr. Karp make substantial contributions to HRCC;
4
5
   isn't that right?
                       Objection, relevance.
6
           MR. BROWN:
7
           MR. LOCK:
                     Well, this is going to become
8
   relevant in a moment, Your Honor, because I have
9
   a document that I would like to discuss.
10
           THE COURT:
                       All right. Let's try to get
11
   through this.
12
   BY MR. LOCK:
           So Mr. Karp, whom I assume you knew to be
13
      Q
   an extraordinarily wealthy man from Philadelphia?
14
15
      Α
           Yes.
           Would be requested to make contributions
16
       Q
   in his name to HRCC; is that right?
17
      Α
18
           Yes.
           Mr. Perzel made those requests; isn't
19
       Q
   that right?
20
21
       Α
           Yes.
22
       0
           Mr. Perzel had a campaign -- among
23
   Mr. Perzel's campaign committees was a committee
   called Friends of John Perzel; isn't that right?
24
           Yes.
25
       Α
```

```
1
      Α
           Right.
2
           Which you understood to be Friends of
 3
   John Perzel; is that right?
 4
      Α
           Yes.
           And that didn't come to you from Brett
 5
       Q
 6
   Feese, that came to you, the e-mail we're
   discussing right now, that came to you from a
   third party; isn't that right?
9
      Α
           Yes.
10
           And in a similar fashion, bills would
   often be reviewed and paid at HRCC by people --
11
12
   they would be reviewed by people other than Brett
   Feese and authorization instructions to pay those
13
14
   bills would come from those other people; isn't
   that right?
15
16
                 It's like I said, I got
      Α
   instructions from a lot of people.
17
18
      0
           And more often than not, the person
19
   providing those instructions was John Hanley;
20
   isn't that right?
21
           Yes.
      Α
22
      Q
           Now --
           But, but he got the instructions from
23
      Α
   other people. He didn't make the decision on his
24
25
   own.
```

1	Q Well, since you brought that up, let me
2	ask you this. And you tell me if you recall
3	having received you may not. I realize this
4	was a while ago.
5	But do you recall receiving invoices
6	from, for example, radio stations for air time or
7	production companies for ads that would have run
8	on radio stations on specific dates that required
9	immediate payment?
10	MR. BROWN: Again, Your Honor, I'm going
11	to object to this as irrelevant and way beyond
12	the scope of direct.
13	MR. LOCK: It's not irrelevant because it
14	demonstrates
15	THE COURT: Ma'am, can you answer that
16	question?
17	THE WITNESS Yes.
18	BY MR. LOCK:
19	Q And those types of requests, particularly
20	during the campaign or a campaign season, would
21	not be unusual, would they?
22	A No.
23	Q They required virtually immediate
24	turnaround, didn't they?
25	A Yes.

instance, you're referring to budgets for individual campaigns?

A Yes.

23

24

25

```
1
      Q
           As opposed to the entire HRCC budget; is
 2
   that right?
 3
       Α
           Yes.
           But as with the HRCC budget, it was
 4
       Q
 5
   Mr. Hanley who was primarily involved in
6
   establishing the budgets for such individual
 7
   campaigns; isn't that true?
8
       Α
           Yes.
9
           Did Mr. Hanley ever tell you to send
       Q
10
   large sums of money -- excuse me, to make
   payments in excess of invoice amounts? Do you
11
12
   have a recollection of that having occurred?
13
       Α
           Would you ask -- can I hear that again?
14
       Q
                 I'll make it a little bit easier
15
   for you because I'm going to show you something.
16
   It may refresh your recollection.
17
       Α
           Okay.
18
      Q
           Just take a look at this piece of paper
19
   if you would, please.
20
      Α
           (Witness complies.)
21
       Q
           Excuse me. Just that portion. You can
   read however much that is included on that
22
23
   document that you believe necessary to place that
24
   written, handwritten note into context.
   that's what I'm directing your attention to, the
25
```

```
1
   handwritten portion.
2
      Α
          Okay.
           Do you have any recollection of this
3
      Q
4
   specific transaction?
5
      Α
           No.
           Do you have any recollection of receiving
6
7
   invoices in the amount of either $4398 or $7920,
8
   as the case may be, but being told to send a
   check for $20,000 by Mr. Hanley?
10
           I don't recall specific things and I
   don't even recall it, but my note was on there.
11
12
      Q
           And your note says send 20,000 per
13
   Hanley?
14
      Α
           Right.
           And that would not be unusual, untoward,
15
      Q
16
   or otherwise suspidious, would it?
      Α
           No.
17
18
           Because you would have inferred that that
      Q
19
   payment was in conformity with the campaign
   budget to which you made reference earlier?
20
21
      Α
           Yes.
22
      Q
           Related to this particular campaign?
23
      Α
           Yes.
24
       Q
           Did you ever see GCR contracts with HRCC,
25
   ma'am?
```

Did I ever see the actual contracts? 1 Α 2 Q Yes, ma'am. Yes. I keep them on file there at 3 Α 4 headquarters. 5 Q And, therefore, we can agree, can we not -- I'm reading from a section of the first 6 7 contract, May 2003 contract, and if you would 8 like to see it, please just ask and I'll show it 9 to you. 10 But we can agree, can we not, that the 11 service which GCR agreed to pay pursuant to its 12 first contract with HRCC was to maintain, update and continually enhance the utility of an 13 14 integrated voter database? 15 MR. BROWN: Objection. This is way beyond the scope of direct. There was no 16 discussion of the actual terms of the contract. 17 18 MR. LOCK: There was a suggestion --19 there was at a minimum an implication necessary 20 to support the allegation contained in the Criminal Complaint and the Affidavit of Probable 21

Cause that the contract was nothing but a cover

contract, that it was a pittance, that it barely

covered anything, let alone the actual service it

provided; when if you look at the contract --

22

23

24

25

```
1
           THE COURT:
                       Mr. Lock, formulate the
 2
   question and let's see if this witness can answer
 3
   the question.
 4
   BY MR. LOCK:
 5
      Q
           Do you remember, ma'am, the language of
 6
   the contract? Would you like me to reread it?
 7
                Trust me. I don't remember it.
   because I kind of glaze over when it comes to
   contracts regarding data, because that's not my
10
          I do fundraisers. I don't recall.
   thing.
11
          THE COURT:
                       I think you answered it.
12
   BY MR. LOCK:
13
           Did you type any transmittal letters from
      Q
   Mr. Feese to Mr. Rigamer, who was the owner of or
14
15
   at least president of GCR?
16
      Α
           I don't recall.
17
           Let me show you a particular letter and
      Q
18
   ask if that refreshes your recollection.
19
      Α
           (Document provided to the witness.)
20
   Okay.
21
       Q
           Having read the April 15th, 2003 letter
22
   from Mr. Feese to Mr. Rigamer, does that refresh
23
   your recollection?
24
      Α
           Yeah.
25
      Q
          About whether or not you typed it?
```

```
1
      Α
           I assume that I typed that. It looks
2
   like I typed it.
3
           All right. And so you understood and
       \mathbf{Q}_{\perp}
   believed, did you not, that sometime around April
4
5
   15th, 2003, Mr. Feese had recently learned that
6
   HRCC did not have a contract with GCR?
7
           MR. BROWN:
                       Objection. That calls for
8
   speculation as to what Mr. Feese knew or whether
   Mr. Feese was lying in there or telling the
10
   truth.
           MR. LOCK: $he learned it when she typed
11
12
   this letter. There's nothing to lie about.
13
           THE COURT: | She can answer it.
14
           THE WITNESS! What was the question
15
   again?
16
   BY MR. LOCK:
17
       Q
           So at or about the time this letter was
18
   typed, April 15th +- I mean, it could have been
19
   dictated a day before, I get that. But you
20
   learned that Mr. Feese had said that he recently
21
   learned that HRCC did not have a contract with
22
   GCR?
23
      Α
           Okay.
           Is that right?
24
       Q
25
      Α
           Yes.
```

```
1
           Now, I assume that -- I don't mean this
      Q
 2
   like in a derogatory way, but your lack of
 3
   familiarity with the second contract was similar
   to the lack -- I mean, it was technical mumbo
 4
 5
   jumbo as far as you were concerned?
 6
      Α
           Yes:
 7
       Q
                  But you did receive bills from
           Okav.
   GCR, invoices, for payment; isn't that right?
9
      Α
           Yes.
10
           And I'm going to show you an example of
   one of those bills and ask you, after you've had
11
12
   a chance to take a look at it, whether or not
13
   that was representative of the monthly invoices
14
   that you received from them?
15
      Α
           Yes.
16
       Q
           That particular invoice that I showed
17
   you, which is dated May the 12th, 2005, was dated
   -- excuse me. Was addressed to Mr. Hanley; isn't
18
19
   that right?
20
       Α
           Yes.
21
           As were all of the invoices from GCR to
       Q
22
   HRCC; isn't that right?
23
      Α
           Yes.
24
       Q
           And the invoice said -- I know you only
25
   had a moment to look at it, so if you want to see
```

```
it again, that's fine -- that the charge was for
1
2
   voter database maintenance/enhancements; is that
3
   right?
4
      Α
           Yes.
           Did I understand you to say, Ms.
5
      Q
6
   Flickinger, that GCR was the subject that would
7
   be addressed at HRCC meetings from time to time?
      A Occasionally. I mean, it wasn't like it
8
   was discussed all the time.
           And, indeed, only very occasionally;
10
11
   isn't that right?
12
      Α
           Yes.
           HRCC meetings were designed for a
13
       Q
   particular purpose and that was to elect
14
15
   Republican -- or reelect Republican candidates to
16
   the House; isn't that right?
17
      Α
           Yes.
18
       Q
           And so it was polling, it was budgeting,
   it was fundraising, those types of things; isn't
19
   that right?
20
21
           Correct.
      Α
22
           Mr. Hanley prepared the agendas for those
       Q
23
   meetings; isn't that right?
24
                 He would ask my input if it had to
      Α
           Yes.
   do with the fundraising end of it. I would
25
```

1 supply that information to him. 2 Ms. Seaman would take minutes, notes at 3 the meeting; is that right? Α Yes. 4 And when those handwritten notes were O 6 typed up in the form of minutes, they were 7 distributed to the attendees and perhaps others 8 as well, I don't really recall to tell you the 9 truth. That's substantially accurate, isn't it? 10 Α Yes. You would receive those minutes; isn't 11 0 12 that true? 13 Α Um-hmm. 14 And to the extent that GCR would be discussed at any of the HRCC meetings conducted 15 16 in the manner we just were talking about, they would -- those discussions, the discussions about 17 18 GCR, would be reflected in Ms. Seaman's notes or minutes; isn't that right? 19 20 Α I guess so, yes. Well, you never --21 Q 22 Α I mean, I don't remember. I don't 23 remember the -- what I got from her, quite honestly. I mean, I was at the meeting. 24 25 Q No, that's fine. Let me just ask you

1 And it's fine, whether the answer is yes this. 2 or no. Did you read the minutes? 3 Α Probably not. When it was -- the minutes -- since you 4 Q 5 didn't read them, let me ask you this: There 6 would be times at HRCC meetings where problems 7 with candidates would be identified; isn't that 8 right? That's right. 9 Α 10 And at a minimum as a general proposition, when problems with candidates were 11 12 identified, Mr. Feese was asked to address those issues with the individuals involved; isn't that 13 14 right? 15 Α Yes. 16 Q So you would have a House member speaking 17 to either a candidate for the House or another House member who was standing for reelection; is 18 19 that right? Α 20 Yes. And that was the protocol that you all 21 Q 22 adopted? 23 Α Pretty much: 24 Q That was the primary responsibility that Mr. Feese had, isn't that right, dealing with the 25

1 members, acting as a liaison between House 2 membership and new candidates and HRCC? 3 And also as the Chairman, it also 4 enhanced his ability to raise money for HRCC, which he did. 5 Did you ever learn at any time who it was 6 7 that arranged to have the boxes with Victory '04 stationery and accompanying envelopes sent to HRCC? 10 Would you repeat that, please? Α 11 Q Do you know who shipped them over? Yes. We know who got them. You told us Mr. Matthews 12 13 received them. 14 I have no idea. 15 Do you know -- well, were you ever told by anybody to shred the material that was sent 16 17 over? 18 Α No. 19 Q Not by Mr. Matthews conveying a message 20 from some third party? 21 Α No. 22 Or anybody else? Q 23 Α No. Now, in the phone call that you've told 24 Q us about, do you remember Mr. Feese inquiring 25

```
1
   whether or not you were aware of the search in
2
   B-2?
3
      Α
           No.
4
      Q
           Do you remember Mr. Feese making a
   reference to a newspaper article that disclosed
   the search?
7
      Α
           I do not remember that.
8
      Q
           Do you remember at any time driving from
   your home during non-work hours to HRCC in
9
10
   relation to the boxes that you've told us about?
11
      Α
           What?
12
           Were you ever called at home and asked to
      Q
   go in to HRCC to meet with other people about the
13
14
   boxes that you've described?
15
      Α
           I don't remember that, if I was.
16
      Q
           Do you remember a meeting conducted on
   April the 2nd, 2008, in Representative Smith's
17
   office?
18
           MR. BROWN: Objection, irrelevant, beyond
19
20
   the scope of direct.
           MR. LOCK: Your Honor, I'm attempting to
21
   identify what I believe to be the time at which
22
23
   the boxes were delivered to HRCC. I understand
   Ms. Flickinger's testimony on that subject.
24
25
   have a different understanding about it, and this
```

```
question is related to my understanding.
 1
 2
           THE COURT:
                       Continue. Ask the question.
 3
   BY MR. LOCK:
 4
       Q
           Do you remember having a meeting in
 5
   Representative Smith's office on April the 2nd,
 6
   2008?
 7
       Α
           No.
8
       Q
           Do you remember ever attending a meeting
   in Representative Smith's office with Mr. Feese
9
10
   in attendance?
11
       Α
           Yes.
12
       Q
           Do you remember -- was that once or more
13
   than once?
14
       Α
           More than once.
15
       Q
           You are -- I'm a lot older than you are.
16
   okay?
17
       Α
           I don't know about that.
18
           But you're a long tenured employee -- I'm
       Q
19
   trying to be --
20
       Α
           That's okay.
21
       Q
           A long tenured employee on the Hill.
22
   right?
23
      Α
           Geez.
24
           MR. McMONAGLE: He didn't mean that.
25
           THE WITNESS: Yeah, he did. Geez.
                                                 What
```

1 is this? MR. McMONAGLE: He's almost done. 2 3 THE COURT: Thank you. Thank you. MR. LOCK: And these guys are no good. 4 THE WITNESS: I'm old. Okay. Next. 5 6 MR. LOCK: Well --7 Sheila, but he's really old. THE COURT: 8 He's really old. 9 BY MR. LOCK: 10 Since I'm deeply ashamed now, but since Q. 11 we know you've been up there for a while, it's 12 true, is it not, that you worked for 13 Representative Barley who held a prominent 14 leadership position in the Republican Caucus? 15 I've worked for several members of leadership. I've worked for Representative 16 17 Perzel. I've worked for Barley. I've worked for Sam Smith. 18 All among the most powerful men in the 19 Q State Legislature; isn't that right? 20 21 Α Yes. 22 Q And at no time did you see or engage in 23 any activity which you found troubling in a way 24 that made you go to those gentlemen and report to them about suspected or possible irregularities 25

```
1
   or worse; isn't that true?
 2
           MR. BROWN:
                       Objection. It's irrelevant
 3
   and beyond the scope of direct at a minimum.
 4
           THE COURT:
                       Sustained.
   BY MR. LOCK:
 5
 6
           With respect to the payment of the bills,
 7
   for example, you never raised any questions about
   the propriety, whether it was right or not right,
   for you to pay a bill as directed by Mr. Feese or
   others, did you?
10
11
           I may have questioned the amount that
      Α
12
   they were paying something but, you know.
13
      Q
           To yourself or to a third party?
14
           To myself a lot, not necessarily to them.
15
           But with respect to the gentlemen that
16
   you referred to as being in leadership, you were
   friendly with those men, you were not a mere
17
18
   employee by any means, were you?
19
           I would like to think they're my friends.
   Well, they were my friends.
20
21
      Q
           And so you had access to them if you had
   certainly work-related problems or other issues?
22
23
           Yes.
      Α
24
      Q
          And now to get back to the question I
25
   asked a short time ago, you never did go to
```

```
1
   Representative Barley, Representative Perzel or
 2
   Representative Smith with respect to any concerns
 3
   you had about any activities that you saw or
   engaged in at HRCC; isn't that right?
 4
 5
           MR. BROWN:
                      Objection.
6
           THE COURT: Sustained.
           MR. LOCK: If I may have just a moment,
 7
8
   Your Honor.
9
10
           (There was a pause.)
11
12
           MR. LOCK: Thank you very much, ma'am.
   have nothing further.
13
14
           MR. DONATONI: Your Honor, on behalf of
   Mr. Stokes, I have no questions.
15
16
                       Thank you.
           THE COURT:
17
18
                    CROSS EXAMINATION
19
   BY MS. McCLELLAND:
20
                I am Donna McClelland. I represent
      Q
           Hi.
   Al Bowman, and I'm going to stand up because I'm
21
22
           If you have any trouble hearing me, let
   short.
23
   me know and I can repeat the question, too.
24
      Α
           Okay.
          With regard to Al Bowman, in these GCR
25
      Q
```

```
1
   contracts, to the best of your knowledge, did he
 2
   have any role in negotiating the contracts with
 3
   GCR?
 4
      Α
           I don't think he had any role in it.
 5
   Neither did I in negotiating it.
6
      Q
           And the signatures that were on the
 7
   contract, can we agree Al Bowman's signature was
8
   not on that contract?
 9
      Α
           It was not.
10
           But certainly these contracts were
11
   discussed at these meetings, correct, the
12
   existence of the contract?
13
      Α
           Yes.
14
           Al Bowman knew that there was, in fact, a
15
   contract between the HRCC and GCR?
16
      Α
           Yes.
           And he knew, in fact, that there was a
17
      Q
   contract for GCR to do work for campaigns for the
18
19
   Republican candidates?
20
      Α
           Yes.
21
           And as part of those contracts, it was
22
   Candidate Connect, correct?
23
      Α
           Yes.
          And Candidate Connect began its
24
      Q
   development after the May 2003 contract was
25
```

```
1
   signed; is that conrect?
 2
           I don't recall when it started.
 3
           Do you remember authorizing or anybody
      Q
 4
   authorizing or making any payments to GCR for
 5
   Candidate Connect before the May 2003 contract
 6
   was signed?
 7
      Α
           I do not. I don't recall that.
           Let me ask you this. The invoices that
       Q
   came from GCR, were they that specific where it
10
   would have said an invoice for Candidate Connect?
11
           No, it was just a generic -- it was just
      Α
12
   the same, just -- it was the same statement in
13
   each one. It was all generic.
14
           So each invoice that came in was
15
   essentially as was read, for maintenance of data
16
   information?
17
           And enhancement, yes, that's it.
      Α
18
       Q
           So any work that was done pursuant to
   that contract was paid under that invoice,
19
20
   correct?
21
      Α
           Yes.
22
      Q
          And that included Candidate Connect,
23
   correct?
24
      Α
          Yes.
25
      Q
          At some point the payments to GCR went
```

1 from one thousand a month to, I believe, was it 2 two thousand a month? 3 Α Yes. 4 Q And as part of that discussion, 5 Mr. Bowman was present during those meetings, 6 right? 7 Α Yes. 8 Q And the discussion was GCR is doing more 9 work for us so we need to pay them more, correct? 10 Α Yes. 11 Q Was it in any way, you know, we're under 12 investigation, we've got to make it look good. 13 we've got to pay GCR more, anything like that? 14 I mean, it certainly wasn't that we were under investigation. They just felt it was 15 16 better, it was -- it helped to cover more. 17 Q I'm sorry? 18 Α It helped to cover more. 19 Q Helped to cover, what do you mean, more? 20 Α More of the work that was being done. 21 More of the work. When you say cover, I Q was afraid you were saying cover as in cover-up. 22 23 That's not what it was, right? I think it was understood there that it 24 Α 25 was not -- we were getting a good deal.

1 Q But GCR was doing more work than a 2 thousand dollars a month worth? 3 Α Yes. Q So the discussion was, we should pay them 4 5 more because they're doing more for us? 6 Α Yes. 7 Q And to kind of balance out, because GCR 8 also had a contract with the Legislature, 9 correct? 10 Α They did. And so it was to kind of balance out what 11 () 12 was being paid to GCR; they were doing more 13 campaign work so GCR needed to be paid more, 14 correct? 15 Α Okay. 16 I'm asking. Is that what the discussion Q 17 was? 18 Α It was more that they felt it wasn't 19 nearly enough, we weren't paying nearly enough to 20 justify the services that were being provided, 21 that we needed to do -- to pay more. And I don't 22 know if they ever thought that two thousand was 23 enough either, but it went to two thousand. When you say they, who do you mean? Q 24 25 Brett, John, John; I mean, everyone. Α Ι

```
1
   mean, I think it was pretty well understood that
2
   it was more or less a cover contract. And I have
3
   to tell you, I never knew until recently how much
   the contract on the Hill was for. I had no idea.
4
   It was for an awful lot of money and I didn't
5
6
   know that.
7
      Q
           Do you know whether Al Bowman, to the
8
   extent he participated in these discussions, did
9
   he demonstrate any understanding of how much was
10
   being paid by the Hill versus how much was being
11
   paid by --
12
           I don't know that he would know that.
                                                   Ι
   don't know that he would have known that.
13
14
   don't know how he would have known that.
15
           He never said anything to you that
   indicated to you that he knew that?
16
      Α
           No.
17
18
           To the extent these discussions were
      Q
19
   going on, he wasn't a primary participant, was
   he?
20
21
           No.
      Α
22
      Q
           So he kind of participated to the same
   extent you did, as in he sat there and listened
23
24
   to them, correct?
25
           Right, although he did deal with GCR more
      Α
```

```
than I did. I mean, I really did not deal with
1
2
   them much at all, just to pay the bills.
3
      Q
           You paid the bills and he did the work in
4
   terms of developing Candidate Connect, correct?
5
      Α
           Correct.
6
       Q
           But really the payments were authorized
7
   by Hanley, Feese, Perzel, and others, correct?
8
      Α
           Yes.
           And that's who negotiated those
9
       Q
10
   contracts, correct?
11
       Α
           Yes.
           It wasn't Al Bowman, was it?
12
       Q
13
       Α
           No.
14
           And Constituents Direct, Al Bowman used
15
   that service as well primarily, correct?
16
       Α
           Yes.
           And that also was paid for by HRCC in a
17
       Q
18
   separate contract?
19
       Α
           Yes.
20
           And Al knew that HRCC was paying for the
       Q
21
   Constituents Direct?
22
       Α
           Yes.
23
       Q
           Now, I noticed on Exhibit 33, if you
   could, that's the exhibit where you listed the
24
25
   people that there had been no payments for or
```

```
1
   expenditures on behalf of. We can agree Al
2
   Bowman's name is not in that list, right?
3
          Correct.
4
      Q
           That's because you did make expenditures
   on behalf of Al Bowman, correct?
          Yes, and I reimbursed him for expenses,
6
7
   yes.
8
      0
           Whatever Al Bowman did that was campaign
   related, he submitted to the campaign committee?
9
10
      Α
           Correct.
11
      Q
           Al Bowman submitted cell phone bills to
12
   the campaign committee, correct?
13
      Α
           Yes.
14
       Q
           He submitted expenditures like travel
15
   expenses to the campaign committee, correct?
16
      Α
           Yes.
17
       O.
           And as a matter of fact, when he started
18
   doing more campaigh work, he actually went off
19
   the legislative payroll and came over to the
   campaign table, correct?
20
21
      Α
           Yes.
           So whenever it started to encroach on the
22
23
   legislative duties, he became a full-time
24
   campaign employee?
25
      Α
           Yes.
```

```
1
       Q
           And --
 2
       Α
           In increments.
 3
       Q
           In increments?
           Yes.
 4
       Α.
 5
           In the middle of April, it may have been
       Q
6
   10 percent or 25 percent, but by November he was
 7
   a hundred percent on the campaign payroll,
8
   correct?
9
       Α
           I believe, yes.
           And the campaign paid him for his
10
       Q
11
   campaign work?
12
       Α
           Yes.
           Not the Legislature?
13
       Q
14
     . A
           Correct.
           MS. McCLELLAND: I have no other
15
16
   questions.
17
           THE COURT:
                       Mr. Kelly?
18
           MS. KELLY:
                       Three quick questions, Judge.
   It will be very, very quick.
19
20
                    CROSS EXAMINATION
21
22
   BY MR. KELLY:
           Just in an abundance of caution, ma'am,
23
       Q
   for Commonwealth Exhibit 33, it references HRCC
24
   payments and that Eric Ruth didn't receive any
25
```

```
HRCC payments?
 1
 2
           Correct.
           The Friends of John Perzel, that's a
 3
      Q
   separate pack, correct?
 4
      Α
 5
           Yes.
           You have no idea what that pack was
 6
       Q
 7
   paying?
8
      Α
               I mean, I don't know. I didn't
   follow that. That wasn't my responsibility.
9
10
           MR. KELLY: That's fine. I just wanted
11
   to make that clear.
           Thank you, ma'am. I have nothing
12
13
   further.
14
           MR. WOODWARD: No questions, Your Honor.
           MR. SIGMAN: Just a couple questions.
15
16
17
                    CROSS EXAMINATION
   BY MR. SIGMAN:
18
19
           Back to that 33 you were looking at, I
      Q
   notice you see on there Don McClintock did not
20
21
   receive any money from HRCC, that's accurate,
22
   right?
23
      Α
           That's correct.
24
      Q
           All the time you were there, McClintock
   got no money from HRCC?
25
```

```
1
           I don't know Don McClintock.
      Α
 2
      0
           You don't even know him, right?
 3
      Α
                I wouldn't know him if I fell over
   him.
 4
 5
      Q
           Understood.
6
           And I can't see him now because I don't
      Α
 7
   have my glasses on.
8
      Q
           Understood. And you've been in the
9
   Legislature quite a while now, right, as Mr. Lock
10
   mentioned earlier?
11
           THE COURT: We can stipulate to that. We
12
   can stipulate to that.
13
   BY MR. SIGMAN:
14
           In all your experience in the
      Q
15
   Legislature, in all your time in the Legislature,
16
   you've never seen or heard or had any knowledge
17
   that Don McClintock ever worked for the
18
   Commonwealth of Pennsylvania or the House of
   Representatives at any time; isn't that a fact?
19
20
      Α
           I don't know him.
21
           THE COURT: | She doesn't know him.
22
   BY MR. SIGMAN:
23
      Q
           You don't know him?
24
      Α
           I don't know him.
25
           MR. SIGMAN: I have nothing further, Your
```

```
1
   Honor.
2
          THE COURT: Thank you.
3
          Mr. Fetterhoff?
4
                   CROSS EXAMINATION
5
   BY MR. FETTERHOFF:
7
          Ms. Flickinger, prior to the first
      Q
   contract that HRCC had with GCR, prior to that
9
   time, let's say between 2001 and 2003, what was
   GCR doing for HRCC? What services were being
10
11
   provided?
12
          I don't know. I mean, I don't know that
   I -- if it was data services, I wasn't really
13
14
   aware of it because that's not what I do. And I
15
   tried not to get involved with it, because I have
16
   enough to do.
17
          How many people worked at HRCC in the
   office on Third Street between 2001 and 2003?
18
19
          Three or four.
      Α
          Okay. Now, the contract with GCR, the
      Q
20
   first contract started sometime in 2003 was your
21
   testimony; is that correct?
22
23
      Α
          Yes.
24
          How about then? Let's forget the first
      Q
25
   two years. Beginning in 2003, what services were
```

```
being rendered by GCR for HRCC?
1
2
          Providing data for mailings and for
      Α
3
   polling.
4
      Q What sort of data?
5
      Α
          Voter data.
6
      0
          Was it names and addresses?
           Names, addresses, phone numbers, vote
7
      Α
8
   history.
9
      Q
           And what would be done with that
   information?
10
11
           That's how lists were compiled for
      Α
   mailings, for campaign mailings or for phoning
12
13
   during campaigns.
14
                      Now, is that all or was there
      Q
          All right.
15
   anything else?
16
      Α
           I don't know. That's all I can think of.
           Okay. Now, when the discussion occurred
17
      Q
18
   in connection with that initial one thousand
19
   dollar a month contract --
20
      Α
           Okay.
21
      Q
           -- you, I believe, testified that you
   didn't recall whether it was Mr. Hanley or Mr.
22
23
   Feese who first mentioned the amount?
24
      Α
           Right. I don't recall.
25
          And are you sure that it was one of them?
      Q
```

- A I mean, that's what I recollect.
- Q Let me ask you this. Do you recall that very meeting where that very discussion occurred or is this a general recollection?
  - A General recollection.

- Q All right. So if I asked you who else were the attendees at that specific meeting, am I correct --
  - A It was usually the same people.
- Q Well, although not always. Mr. Perzel would be there sometimes and often not though; is that right?
- A And he would call. Sometimes if it was on a Monday morning, he would be on his way to Harrisburg so he would call in on a conference call or Brian.
- Q Now, you were asked by the prosecution whether a thousand dollars a month was adequate and you answered that you didn't know; is that right?
  - A Right. I don't know.
- Q All right. Do you recall any discussion at the time -- not what you may have learned since or what somebody told you, but what you understood at the time, was there a discussion

about whether a thousand dollars a month was 1 2 adequate to reimburse GCR for the services then 3 being rendered? MR. BROWN: Your Honor, at this point I'm 4 going to object. That's been asked and answered. Ms. McClelland elicited that it was a cover contract and that the amounts being paid were 7 8 nowhere near what was required. MR. FETTERHOFF: No, I'm asking a 9 10 different question. I'm asking the question, 11 first of all --12 THE COURT: I'm going to allow her to 13 answer that question. 14 BY MR. FETTERHOFF: Ma'am, did you understand or do you 15 Q 16 recall the question? 17 Α I forget. Can you repeat it? The question is this: You have been 18 Q 19 asked other questions on this general subject. I'm asking you a very specific question and that 20 21 is: Was there a discussion among whoever was 22 involved in discussing that first GCR contract 23 and specifically the amount of it as to whether 24 or not that was an adequate price for the 25 services then being rendered?

```
1
      Α
           I have always -- I just thought it was to
 2
   pay them something! I didn't -- I don't think
 3
   anyone thought it was paying for the actual
 4
   services.
          Well, that's what you think. There's a
      Q
   lot of water under the bridge between then and
 7
   now.
         My question is: What did you think then
 8
   based on what somebody said?
9
      Α
           I don't remember.
10
      Q
          Was there something said that led you to
   that belief or is that belief later acquired?
11
12
           MR. BROWN: Objection, asked and
13
   answered.
14
           MR. McMONAGLE: It's a fair question.
15
           THE COURT: | She can answer it.
16
   BY MR. FETTERHOFF:
17
      Q
           Do you understand what the question is?
18
           I -- I don't remember. I mean. I had --
19
   I don't know. I can't differentiate between how
   I felt -- what I thought then and what I know
20
21
   now. I can't. I can't.
22
      Q
           I understand. That's the problem.
   when you testified, as Mr. Brown just said, when
23
24
   you testified a few minutes ago that it was your
25
   impression that it was a cover contract, was that
```

an impression that you now have or developed over time; or did you sit there when that subject first came up in 2003 and you sat there thinking, my God, this is a cover contract?

A I don't know that I thought -- I don't remember what I thought then. I honestly -- it's an honest answer. I cannot differentiate between what I thought then and what I think now with what I know.

Q I understand. Now, how about two years later, when did Candidate Connect come into usage, was it between the first --

A I don't remember.

Q Well, let me finish the question. I'm trying to help you a little bit. Did Candidate Connect come into usage by HRCC between the first contract and the second contract or at some other time?

A I don't remember when it started.

Q Can you remember for certain that as of 2005 and the second contract, that as of that time, Candidate Connect was in use by HRCC?

A Yes.

Q Okay. Now, do you recall the specific meeting with specific people in attendance where

that second contract was discussed or is that a general recollection?

A No. It was John Hanley and Brett. I don't know if it was one or the other or simultaneously saying it was discussed that we needed to up the amount that we were paying GCR.

Q Your testimony earlier was that the discussion at that time, not later but at that time, was that there were additional services being provided?

A Right. And that's why they needed to increase the contract.

Q Now, was there any discussion at all at that time among the people there present that one thousand was no longer adequate but two thousand would be adequate?

A One thousand was not adequate and they needed to raise it, and they would let me know what it would be because I had to pay the bill, whatever that would be and --

Q Did anyone say anything?

A I believe, I believe it was Brett who said to me, and then he later on got back to me and told me how much the contract was to be for.

Q All right. Did anyone say anything to

```
the plain effect that this is a cover contract to
1
2
   make things look good?
3
      Α
          Did they say that per se? No.
4
      Q
          Did they say that?
      Α
5
          No.
          Now, were you aware either in 2001 at --
6
   2003 at the time of the first contract or later
7
   in 2005 of the second contract whether Friends of
   John Perzel was paying anything to GCR?
10
      Α
          Was I aware of it?
11
      Q
          Yes.
           I was not.
12
      Α
          All right. Now, you did know over time
13
      Q
14
   that besides Friends of John Perzel making direct
15
   contributions to HRCC, Friends of John Perzel
   would also reimburse HRCC vendors directly from
16
17
   time to time; is that correct?
18
      Α
           Yes.
           Now, you just said you didn't know
19
20
   whether Friends was paying GCR as late as 2005,
21
   right?
           I didn't check his reports I don't know
22
23
   what he paid.
           You're not being faulted, ma'am. You're
24
25
   just being asked.
```

```
You're familiar with the three Victory
1
   Funds, Victory 2004, 2005 and 2006, in general?
2
3
      Α
           In general.
      Q
           Do you know or did you know at that time,
   2003 to 2005, whether any one of those Victory
   Funds was making payments to GCR? Did you know
   that then?
8
      Α
           No.
9
          You're familiar with another pack none as
   the 1776 Committee by Mr. Perzel?
10
11
      Α
           Okay. I know the 1776 Committee.
12
      Q
           Okav.
                 Did you know then whether or not
13
   the 1776 Committee was making any payments to
14 l
   GCR?
15
      Α
           I did not.
           Did you know whether the Citizens for
16
      Q
17
   Government Reform then was making any payments to
18
   GCR?
           I did not.
19
      Α
      Q
           Did you know then whether the PA
20
21
   Leadership Pack was making any payments to GCR?
22
      Α
           I did not.
23
           Even today, ma'am, do you know, yes or
   no, whether any of those packs or campaign
24
25
   committees that I listed was then making payments
```

1 to GCR? 2 Α I have no idea. 3 Now, how many vendors during the campaign Q cycle, how many vendors in a typical campaign 4 5 cycle would HRCC have? Overall, any vendor? 6 Α 7 Q Yes. I have no idea. Fifty -- I don't know. Α 9 It's a guess. I don't know. 10 Q Between fifty and a hundred, some of them 11 very small, some of them very big? 12 Α Yeah. 13 Q Now, when you said that Mr. Feese was 14 very involved in budget, you mean the overall campaign budget that was prepared by Mr. Hanley, 15 16 is that what you mean? 17 Α Yes, and also paying of the bills. And 18 his attention to it, I think, dwindled as it went 19 I think when he first started as campaign chairman, he was really very attentive and he was 20 21 -- he was in charge. He wanted to show that he 22 was in charge, so he paid attention to those 23 details. 24 Q When you received a bill, what was the 25 process? Would you mail a copy of it or fax a

```
1
   copy or scan and e-mail a copy to Mr. Feese?
 2
           No.
                Usually I would make an accounts
 3
   payable listing every week or every two weeks,
 4
   whatever the case may be, to show whatever bills
 5
   were ready to be -- should be paid with the name
 6
   of the company, whatever it was -- the
 7
   description of it and the amount, and then with
 8
   the total listing and also showing how much cash
   we had on hand.
10
           And how often would that occur?
       Q
11
       Α
           What's that?
12
       O
           How often would that occur?
           It was different. During the campaign
13
       Α
   cycle, if we were in the heat of a campaign, like
14
15
   September, October, probably weekly.
16
       Q
           How would that --
17
       Α
           I would e-mail it.
18
       Q
           With an attachment?
19
       Α
           Yes. I would e-mail it to Brett, to John
   Perzel, Brian, whoever was involved, you know.
20
21
      Q
           Representative Smith?
22
           Yeah, or -- and when Barley was there, to
      Α
   Barley.
23
24
      Q
           Representative Arnold?
25
      Α
           Yes.
```

1 Q Now, so how many people roughly would be 2 on that list, six or eight? Α About. Q · 4 Do you retain copies of those e-mails? 5 MR. BROWN: Objection, irrelevant, beyond the scope of direct. 7 BY MR. FETTERHOFF: Let me ask you what the rest of the process was? 9 10 I would ask for them -- you know, if 11 there was a problem with anything or -- and also 12 by virtue of the fact how much money we had on 13 hand, it was kind of like -- a lot of times on 14 the subject line, I would just put help because I 15 needed them to help raise money so we could pay the bills. 16 17 Q Would I be correct to suppose that 18 normally you did not get a response from 19 everybody on the transmittal list? It was more or less an FYI. 20 Α Right. 21 if there was a problem with any of them, they 22 would let me know. All right. So am I correct, therefore, 23 24 that Mr. Feese as a normal rule would not e-mail 25 you back and say, yes, pay bills 1 through 10 but

```
do not pay bills 11 and 12?
1
2
      Α
          Right.
                  Correct.
3
      Q
          I'm correct that he would not do that?
4
      Α
          That's correct, but, you know, there were
5
   some things like cell phone bills he had -- at
   first he had a problem with the amount of the
7
   cell phone bills but -- and some of the -- if
   there were legal bills or on our lines of credit
   when we had to -- when we were paying that down.
9
10
          All right. So your testimony here today
   is that Mr. Feese was very involved in the
11
12
   budget.
            That means two things, No. 1, he was
13
   familiar with the overarching budget of HRCC and
14
   what the allocations of the money would be to
15
   different campaigns, right?
16
      Α
           Correct.
17
           And No. 2, No. 2, you really are basing
      Q
18
   that he was familiar with the expenditures, the
19
   detailed expenditures from bill to bill based on
20
   the fact that you sent these notices out to half
21
   a dozen or eight people?
22
      Α
           When I first --
           And sometime he responded?
23
      Q
24
      Α
           Can I explain something?
25
      Q
           Sure.
```

A When I -- when Brett took over as HRCC Chairman in 2002 or -- 2002, he -- I sat down and talked to him, because I had worked previously for John Barley and he and John did not get along. And I was considered Barley's person.

And I knew that, you know, coming into this it was -- it was going to be difficult -- it would be strained relations probably between Brett and I.

So I sat down with him right when he -shortly after he took over and I said, you know,
that I was loyal to whoever was in charge, that I
would be honest with him and, you know, what's
done is done.

And from that point on, I mean, he -- as we went on, Jill would tell me, you know, he's -- he trusts you, you know. And so it took a while to develop that relationship but we did, and as time went on he was less -- he would -- he wouldn't be as -- he wouldn't check things out as hard as he did at first.

Q When you say at first, when was that?

A In 2000 -- when he became Chairman again in 2002, I think it was. And it took a while.

It took a couple months but, you know, as time

went on he realized that he could trust me and that, you know, I worked for the caucus. I mean, I worked for all of them. I wanted them to get reelected.

Q So most of the bills, a very small sample of which Mr. Lock discussed with you and a much larger sample as you know we have here, most of those bills were paid promptly by you in the ordinary course of business without receiving specific approval by any member of the Legislature?

A I didn't think it was necessary. I mean, if we got a monthly bill for coffee, I didn't think it was necessary to get approval on that. I didn't think it was necessary to get approval on a payment every month for a copier, that every month it was the same amount, \$221. So some of those things were paid automatically.

Q Right.

A It was things that came up that were not done monthly.

Q And some of these vendors, even the larger ones, Susquehanna Polling, Cherry Communications, those were contracts or those were standing relationships, so those bills were

```
paid without the specific approval of a member of
 2
   the Legislature?
 3
      Α
           No.
                They usually were looked at by
4
   someone because they were not -- that was not a
5
   set monthly bill. That would vary a lot.
6
   of those bills were --
      Q
           I thought you said Constituents Direct
   was the same monthly bill?
      Α
           Yes
9
           So if it was a set monthly amount, did
10
       Q
   you expect specific approval each month from a
11
12
   member of legislation?
      Α
13
           No.
           Likewise, HRCC made scores, literally
14
       Q
   scores of payments in large amounts to
15
   Susquehanna Polling. Is it your testimony here
16
17
   today that every single bill was reviewed and
18
   approved to you by a member of the Legislature
19
   prior to the payment being made?
20
      Α
           Oh, yes, on polling.
21
      Q
           All right.
22
      Α
           Steve Dull and -- primarily Steve Dull
   would look at them, because he was overseeing the
23
24
   polling.
25
      Q
           Okay.
```

1 Α Because I had no idea. 2 Q Well, all right. So it was Mr. Dull and 3 not Mr. Feese in that case? 4 Α Yeah. And we would discuss that at some 5 of the meetings, if there were large -- and some 6 of the bills were very large for polling. 7 Q Well, but I'm looking at a hundred bills 8 It's not your testimony that there was a discussion of every single bill by Susquehanna 9 10 Polling? No, there was not a discussion of every 11 Α single bill. 12 Did you have a signature stamp to stamp 13 Q the checks --14 15 Α Yes. -- to make vendor payments? Did you have 16 Q 17 a stamp for Mr. Barley when he was treasurer? Α Yes. 18 Objection, irrelevant. 19 MR. BROWN: 20 MR. FETTERHOFF: Well, the question is ultimately whether Mr. Feese ever had signature 21 22 authority for expenditures by HRCC. 23 THE COURT: Did he? 24 THE WITNESS: I don't think so. BY MR. FETTERHOFF: 25

```
The signature authority was restricted to
1
      Q
2
   treasurers; is that right?
          It was whoever the head of the caucus.
   Like at one point it was Matt Ryan and John
4
   Perzel. It was John Perzel and -- whoever, Dave
5
   Arnold or Sam Smith, but it was not Brett.
6
7
      Q
           In other words, the general chairman and
   the treasurer would have signature authority --
9
      Α
          Yes.
           -- to pay the vendors; is that right?
10
      Q
      Α
11
          Yes.
12
      Q
           Mr. Feese was the members chairman, he
13
   had no authority to sign checks?
14
      Α
           It wasn't a matter of signing the checks.
15
   T --
16
           I'm just asking you --
      Q
           MR. BROWN: I would ask to let her
17
   finish.
18
           MR. FETTERHOFF: She can finish, but the
19
   question is not in general who was involved in
20
21
   the discussions. The question at this point, to
22
   avoid the accusation that there's repetition
23
   involved, is simply to say who had the authority
24
   to sign the bloody checks.
   BY MR. FETTERHOFF:
25
```

Q Is it correct that it was the treasurer 1 2 and the general chairman? 3 Α Well, actually I stamped the checks. 4 They didn't sign them. I stamped them. 5 Q Right. 6 Can I explain this? Again, I'm going to ask that MR. BROWN: 7 8 the witness be allowed to finish her answer. THE COURT: 9 She wants to explain it. BY MR. FETTERHOFF: 10 11 Q Go ahead. 12 The process, I had a voucher system set Α 13 up where I would have a voucher set up and attach 14 it to the bill. That was the point where the 15 decision was made. After I would receive a bill, 16 I would write up the voucher stating the date I 17 got it, the amount of it, the name and address 18 and everything. 19 And then at that point was where I would 20 ask for -- if there was a bill in question, I 21 would ask for permission to pay it; or if it was 22 just an ordinary course of, you know, a payment 23 on a copier or whatever it was, a monthly 24 payment, but each invoice, there is a voucher system attached to that. And at that point is 25

1 where the question and answer or approval would 2 come from. 3 After I got the approval, I would just 4 enter the data in my system and run the check through and stamp it. So no one really signed 5 6 it. I stamped the signatures on the checks. 7 You had a stamp for Mr. Barley; is that Q 8 right? And whoever -- it's two signatures. 9 Α It's two signatures on the check. I had one stamp 10 11 with both signatures on. Matt Ryan and John Barley, right? You 12 Q had a stamp at that time with those two names on 13 it? 14 15 Right, or Matt Ryan and John Perzel. Α Right. But you never had a stamp that 16 Q 17 included the name of Brett Feese? Α 18 Correct. It ended up being simple. 19 Q You testified about a phone call. This 20 is in connection with the boxes now. You 21 22 testified about receiving a phone call from Mr. Feese? 23 Α 24 Yes. Was that the one and only discussion 25 Q

```
about these boxes that you ever had with Mr.
1
2
   Feese in that time period?
 3
      Α
          Yes, that I recall. Can -- there seems
4
   to be -- during that time period --
          THE COURT: Take a deep breath.
5
6
          THE WITNESS: When the box -- what
7
   everyone refers to as the night of the thousand
   boxes, during that time period, my mother -- I
9
   took care of my mom for six years.
10
        The last week of February, I had Hospice
   come in and help me. I was in and out of the
11
12
   office very seldom. My total focus was on my
13
   mother.
          She died March 2nd. And you have to
14
15
   believe me. I do not recall anything really
16
   regarding -- if people made calls to me about
   these boxes, other than that one that I do
17
   remember from Brett, I don't remember them
18
   because my mind was on my mother.
19
   BY MR. FETTERHOFF:
20
21
      Q
           I understand that, ma'am. Take another
   minute if you need it.
22
23
          THE COURT: | Are you okay?
24
          THE WITNESS: Um-hmm.
25
   BY MR. FETTERHOFF:
```

```
1
      Q
           As close as you can recall, and I do
 2
   understand it's difficult in any way, and as you
 3
   just explained I certainly understand it's
 4
   particularly difficult for you; but is it
   consistent with your recollection that Mr. Feese
   called you on or about April 1st, 2008, about
 7
   those boxes?
8
      Α
           I don't recall what date it was. I know
9
   I got a call from him.
10
          Would it have been after the death of
11
   your mother?
12
      Α
           I assume so.
           Now, you testified that there were two
13
      Q
14
   big brown boxes and two standard envelope boxes;
15
   is that right?
16
      Α
           There were several boxes, several brown
   boxes and several -- I think there were two large
   brown boxes and several white envelope boxes. I
18
19
   don't know the exact count.
20
           I don't mean to be overly petty about
      Q
21
   this, but you see this box on the table, the
22
   second table here in front of you?
          Actually, I can't see that.
23
24
           It's right behind Mr. Brown, between
      Q
25
   Mr. Brown --
```

```
1
      ·A
           Okay.
 2
      0
           Is that about the size?
3
                      Ma'am, it's similar to this
           THE COURT:
4
   box (indicating).
5
           THE WITNESS: Yes, it's like that.
   BY MR. FETTERHOFF:
6
7
      Q
          A standard banker's box as they call
8
   them?
9
      Α
           Yep.
10
           MR. FETTERHOFF: Thank you, ma'am.
           THE COURT: Mr. Bergstrom?
11
12
           MR. BERGSTROM:
                           No, sir.
           THE COURT: Any redirect?
13
14
           MR. BROWN: | No. Your Honor.
           THE COURT: You can step down.
15
           MR. LOCK: Your Honor, I have a brief
16
17
   series of questions based on cross examination by
   other defense counsel. I see somebody shaking
18
19
   their head.
           That's entirely appropriate since they
20
21
   all, my colleagues, represent whom they represent
22
   and I represent a discrete interest; and I would
23
   like an opportunity to exercise my right to cross
   examination based on those questions.
24
25
           MR. BROWN: Your Honor, at this point I'm
```

```
1
   going to object to that. Each Defendant has had
2
   the opportunity to cross-examine based on what
3
   happened on direct. This is completely
   inappropriate. I'm asking that this witness
4
5
   be excused.
6
           MR. LOCK: That's a novel notion. That's
7
   just made up. That's simply untrue.
8
           THE COURT: Mr. Lock, I think the cross
   examination for this witness is finished. So I'm
9
10
   going to dismiss the witness.
11
           Thank you very much, ma'am.
           THE WITNESS: Thank you.
12
13
14
           (Witness excused.)
15
           THE COURT: Let's take a 15-minute break,
16
17
   recess.
18
           (Court was held in recess at 11:05 a.m.)
19
20
21
           (Recess.)
22
23
           (The following proceedings occurred,
   beginning at 11:20 a.m.:)
24
25
```

```
THE COURT:
                       All right. Is the
1
2
   Commonwealth ready to go?
3
           MR. SPROW:
                       Yes, Your Honor.
4
           THE COURT:
                       Call your next witness.
5
           MR. SPROW:
                       The Commonwealth calls Agent
6
   Speaks.
7
8
                       GARY SPEAKS,
   called as a witness, being duly sworn, testified
9
10
   as follows:
11
                   DIRECT EXAMINATION
12
   BY MR. SPROW:
13
           Would you please state your name and
14
15
   spell both your first and last names for the
16
   record?
17
           Gary Speaks, G-A-R-Y, S-P-E-A-K-S.
       Α
      Q
18
           Where are you employed?
19
           The Pennsylvania Office of Attorney
20
   General as a special agent in the Bureau of
   Criminal Investigation.
21
22
       Q
           And is that the position you held on
   February 29th of 2008?
23
       Α
24
           Yes.
25
           Talking specifically about that date, did
       Q
```

you go to the State Capitol building on that 1 date? 2 3 Α Yes. And what was the purpose of going over 4 Q 5 there? 6 Α I accompanied Chief Deputy Attorney 7 General Frank Fina to the Capitol building 8 because of a subpoena that was issued, I believe, 9 that day to look at a number of boxes in 10 different areas of the Capitol. 11 We proceeded to the basement of the 12 Capitol complex to a room which was called B-2. 13 We were met there by Jack Krill, George Bibikos 14 and Jill Seamans The door was subsequently opened to B-2. It was a storage area in the back 15 16 of some offices. 17 Me and Frank Fina examined 35 boxes. What were in the boxes; budget information, grant 18 19 information, economic development information. It was determined there was no campaign material 20 21 in those boxes. 22 Q Okay. And the basic -- you were familiar 23 with the basic purpose of the subpoena? 24 Α Yes. 25 Q And that was for campaign materials that

```
1
   you were looking for; is that right?
 2
       Α
           Correct.
 3
           So you go to B-2, you search the boxes
       Q
 4
   there, you don't find campaign materials?
 5
       Α
           That's correct.
 6
       Q
           Then what do you do?
 7
       Α
           We then proceeded up -- the group
   proceeded up to the Main Capitol building, Room
 9
   414.
         We were met there by John Zimmerman.
                                                 We
   then waited a period of time for Mr. Towhey to
10
   come in from the -- I believe the eastern part of
11
12
   the state.
13
           After approximately, I think it was, 45
14
   minutes or so, he arrived and opened up his
15
   office door. The gentleman then removed
16
   approximately -- well, it was 14 boxes of
   materials.
17
18
           We examined the materials. They were
19
   materials related to the Speaker, more like what
   I would describe as promotional items, things you
20
   may give away, things like that; at which point,
21
22
   I believe it was after 9 p.m., this was a Friday
23
   evening.
           I then asked the gentleman if this was
24
25
   all the material. Mr. Towhey, Mr. Zimmerman and
```

```
Mr. Krill at that point indicated yes, that was
 1
 2
   it. I recall Frank Fina asking if there was
 3
   anything that had been taken out or hidden, and
 4
   those gentlemen indicated negatively.
 5
           At that point it was sometime after 9
   p.m., we then exited the Capitol.
 6
 7
           All right. Now, you indicated that
   Mr. Fina asked whether any materials had been
   taken out or hidden. Who did he ask that to?
9
10
           The group of gentlemen that was there.
11
   At that point I recall Jack Krill, Mr. Towhey and
12
   Mr. Zimmerman.
13
      Q
           And who answered him?
14
      Α
           I indicated in my report that they all
15
   answered negatively.
16
           All of them did?
      Q
17
      Α
           Yes.
18
      Q ·
           That would include the three individuals
19
   you just named?
      Α
20
           Yes.
21
       Q
           The boxes that you looked through, how
   did you come into possession of those?
22
23
   talking about Room 414 now.
24
           We were in the -- I guess you describe as
      Α
25
   a reception area in the office area of Room 414,
```

```
We did not enter any of the offices. The
 1
 2
   gentlemen brought them out to us, so we stayed in
 3
   the reception area inside of the office.
 4
           MR. SPROW:
                       Those are all the questions
 5
   -- hold on.
 6
 7
           (There was a pause.)
8
9
   BY MR. SPROW:
10
      Q
           You mentioned the name Jack Krill.
11
   you know who that is?
12
       Α
           Yes.
13
       Q
          Who is that?
14
      Α
           He's an attorney, I believe, working at
15
   the Capitol.
16
       Q
           You also mentioned an individual named
   Bibikos. Is he also an attorney?
17
      Α
18
           Yes.
19
           The gentlemen that you were talking
       Q
   about, Paul Towhey and John Zimmerman, I'm going
20
21
   to take them one at a time and ask if you see
22
   them in the courtroom. Do you see Paul Towhey?
23
      Α
           Yes, I do.
24
      Q
           Can you identify him for the Judge?
           MR. WOODWARD: I'll stipulate Mr. Towhey
25
```

1 is here. THE COURT: Thank you. 2 3 BY MR. SPROW: 4 Q And John Zimmerman? Yes, I do. In the back corner there. 5 Α 6 0 You also mentioned the name Jill Seaman. 7 Do you see her in the courtroom? 8 Α Yes, I do, in the back row next to her 9 attorney. 10 MR. FETTERHOFF: We would stipulate. THE COURT: Thank you. 11 12 THE WITNESS: Thank you. 13 MR. SPROW: Thank you. That's all. 14 15 CROSS EXAMINATION 16 BY MR. McMONAGLE: Just briefly, Agent. Good morning. 17 Q 18 Α Good morning. 19 As I understand it, I think you told us that the subpoena was issued on February 29th; is 20 21 that correct? 22 Α I believe it was. I think it dealt with two different subpoenas. One had been issued 23 24 earlier that day. I did not issue it. I was 25 simply called to accompany Chief Deputy Frank

```
1
   Fina.
2
      Q
          Okay. But this is actually the 29th?
3
      Α
          The Friday, yes.
4
      Q
          Okay. Had you issued any subpoenas,
5
   similar subpoenas, prior to the 29th?
      Α
           I did not.
6
7
          Did anybody, any of your colleagues?
      Q
          Not that I'm aware of.
8
      Α
9
      Q
           Okay. So the subpoena was specific as to
10
   what?
11
           My -- I didn't issue the subpoena.
      Α
   didn't read the subpoena or see the subpoena.
12
                                                    Ι
13
   was told to accompany Frank Fina. We were
14
   looking for campaign-related documents.
15
           So Mr. Fina had the -- I didn't mean to
16
   walk on your words. What were you about to say?
17
      Α
           That's it.
           Okay. Mr. Fina actually had a copy of
18
       Q
19
   the subpoena with him?
           I don't recall if he did or not.
20
      Α
21
      Q
           Have you ever seen the subpoena?
22
      Α
           Not that I recall.
           Okay. But you do remember going with
23
       Q
24
   Mr. Fina?
25
      Α
           Yes.
```

1 Q And who else? 2 Just the two of us from the Attorney 3 General's Office. 4 Q And where exactly do you go on the 29th 5 and what time? 6 It was after 6:00. We went to the 7 Capitol complex. B-2 is, I believe, in the Southern Office Building. I'm not sure. 9 names have changed. It was in the basement. 10 Q Okay. Is that when you go directly to 11 the basement? I believe at some point we met up with 12 Α Jill Seamans. I can't recall -- I mean, this was 13 14 two years ago -- exactly where we met up, but we were taken there. I prior did not know where B-2 15 16 was. 17 Had you had contact with Ms. Seaman Q before going to the basement? 18 19 Α I did not, no. 20 Q You didn't? 21 Α No. 22 Did anybody else in your presence? Q 23 Α Not that I know of. 24 Q So you go to the Capitol. It's after 25 6:00?

```
Α
 1
           Correct.
 2
           And you go down to B-2?
       Q
 3
       Α
           Yes.
 4
      . Q
           And there are some other individuals down
 5
   there, Ms. Seaman among them?
       Α
           Yes.
 6
 7
       Q
           I take it they're cooperating with you?
8
       Α
           Yes.
           Facilitating whatever requests you had?
9
       Q
10
       Α
           Correct.
11
       Q
           And you go into this area and you go
12
   through 35 boxes?
13
       Α
           Yes, yes, we did.
14
       Q
           And you look through those 35 boxes and
15
   you satisfy yourself that there was no campaign
16
   material?
17
       Α
           Correct.
18
       Q
           And then at some point in time you tell
19
   us you go to Room 414?
       Α
20
           Correct.
21
           Do you go directly there?
       Q
22
       Α
           From B-2, yes, we walked as a group.
23
   walked up there.
24
       Q
           Why?
25
       Α
           I believe there were more boxes that we
```

```
1
   were going to look at.
2
          Well, who provided that information to
3
   you?
          I don't recall that.
4
      Α
5
      Q
          Was there a conversation in the basement
6
   between you and any of the people that were there
7
   that suggested there were more boxes upstairs?
8
           No, I don't remember that conversation.
      Α
9
      Q
           Did the subpoena in any way direct the
   search of any other offices?
10
11
           I think I answered I hadn't read the
12
   subpoena.
          All right. You go up to 414 and I think
13
      Q
14
   you told us that Mr. Zimmerman was there?
15
      Α
          Yes.
16
          And what do you do once you get up there?
17
          At that point we were in -- we had access
18
   to the lobby area but not access to any of the
19
   offices.
             Someone had been on the phone.
20
   recall exactly if it was Mr. Towhey. I believe
21
   he lived in the eastern part of the state and the
22
   weather was very poor that night, so we waited
23
   for him to arrive to unlock the office where
24
   these boxes that we eventually looked at were.
25
          How long did you wait for?
      Q
```

```
1
           I believe it was 45 minutes to an hour.
       Α
 2
   It was a significant amount of time.
 3
       Q
           All right. | So Mr. Towney comes through
 4
   the snow to the Capitol, correct?
 5
       Α
           Yes.
 6
       Q
           And then opens his office?
7
           Yes, I believe it was his office.
       Α
8
       Q
           Were there any other offices open?
9
       Α
           Not that I recall.
10
           So Mr. Towney lets you into his office
       Q
11
   and --
12
           Well, we didn't enter his office.
       Α
13
       Q
           You didn't?
14
                I test ified that we stayed in the
       Α
           No.
15
   lobby area.
16
       Q
           I'm sorry?
           I testified that we stayed in the lobby
17
       Α
18
   reception area of 414.
19
           Okay. And then what happens?
20
       Α
           Then the boxes, the 14 boxes were brought
   out to us. The same as we did downstairs, we
21
   examined them for campaign material and
22
23
   subsequently left the building.
           All right. Now, who was there when you
24
25
   examined those boxes?
```

1 Α As I testified before, Mr. Bibikos, Jack Krill, Jill Seamans, Mr. Towhey, Mr. Zimmerman, 3 myself, Chief Deputy Attorney General Frank Fina. All right. And you told us that in those 4 Q 5 boxes you mentioned promotional items? 6 Α Yes. 7 Q Could you be more specific? 8 I believe there was wallets, some type of Α 9 briefcase, they all had Speaker name on them. 10 There were bags, you could almost say like a 11 shopping bag, that had Speaker of the House on 12 them, that type of thing. 13 Q Did you provide or receive information at that point in time that it had something to do 14 with the Speaker's Ball? 15 16 I recall something about the Speaker's Α Ball, yes. I believe I recorded that in my 17 18 notes, too, yes. 19 Q Do you have your notes with you? 20 Ά No, I do not. 21 Q And it's your recollection that Mr. Fina 22 said something before leaving about whether 23 anything had been taken or hidden? Taken or hidden, that's correct. 24 Α 25 Q And do you -- did you write down his

```
1
   anybody had found or removed any worthless
 2
   stationery from 2004? He didn't ask that
 3
   question, did he?
          I don't recall that specific question,
 4
 5
   no. sir.
          He didn't ask any questions about
 6
 7
   stationery from 2004, did he?
           I don't recall questions about
      Α
9
   stationery.
10
      Q
          Okay. And at that point in time you guys
   left?
11
12
      Α
          Correct.
          MR. McMONAGLE: Agent, thank you.
13
14
          THE COURT: Mr. Winning?
15
          MR. WINNING: No questions, Your Honor.
16
   Thank you.
17
          THE COURT: Mr. Lock?
18
          MR. LOCK: Hello, good-bye. No
19
   questions.
          THE WITNESS! Thank you.
20
21
          MR. DONATONI: Thank you, sir.
                                            No
22
   questions.
23
          MS. McCLELLAND: No questions.
24
          MS. KELLY: No questions.
25
          MR. WOODWARD: I have a few, if I may.
```

THE WITNESS: Um-hmm. 1 2 CROSS EXAMINATION 3 4 BY MR. WOODWARD: 5 Q Agent, you testified that on the 29th 6 you, Mr. Fina and two lawyers, Krill and this 7 other fellow, they re lawyers, correct? 8 Α Correct. 9 Q Towhey is not a lawyer? 10 Α Not to my knowledge, no, he's not. 11 Zimmerman is not a lawyer, true? Q 12 Α No. 13 You go down to B-02 pursuant to a Q 14 subpoena that was issued that day, true? 15 Yeah, I believe it was issued that day. Α 16 Q Are you aware, sir, that that subpoena 17 was for the documents and/or boxes that were 18 removed from that area on February 26th? As I testified before, I had not read 19 20 that subpoena, no. 21 Q So when you went down there, you didn't 22 know that the subpoena was for material that was 23 allegedly removed on the 26th? 24 Α No. Like I testified, I had not read 25 that subpoena.

1 So you just followed Mr. Fina's lead; is Q 2 that accurate? 3 Α That's correct. 4 Q So now you get up to Mr. Perzel's office, 5 true? 6 Α Yes, sir. 7 Q And you testified to Mr. McMonagle who 8 cross-examined you with respect to what Mr. Fina 9 asked? 10 Α Correct. 11 As I remember your testimony, you can certainly correct me if I'm wrong, you said that 12 Mr. Krill, Mr. Towhey and Mr. Zimmerman all 13 14 answered negatively. True? 15 Α Yes. Now, you certainly knew the importance of 16 Q what you were looking for, true? You knew the 17 18 importance of campaign material? 19 Α Yes. 20 And you knew that that was a very Q important question that Mr. Fina had asked, true? 21 22 I assumed it was. I didn't know the 23 importance at the time. 24 Q Well, you were taking notes 25 contemporaneously, were you not?

```
1
       Α
           Right.
 2
           By the way, sir, how long have you been
       Q
 3
   an agent?
       Α
           Approximately 18 years.
 4
 5
       0
           So you've been in law enforcement 18
 6
   years or longer?
 7
       Α
           Right.
           You certainly know the importance of
 8
       Q
   statements made by people that are relevant to
10
   that which you're looking for?
11
       Α
           Yes.
12
       Q
           You understand that, right?
13
       Α
           Yes.
14
           At any time, sir, when you heard these
       Q
15
   three reply negative, did you ever write that
16
   down and say, Mr. Towhey, would you just sign
   this?
17
           No, I did not.
18
       Α
           You didn't?
19
       Q
20
       Α
           No.
21
           Did you ever ask Mr. Towhey to give you a
       Q
22
   statement reflecting his answer?
23
       Α
           No, I did not.
24
       Q
           By the way, you don't have any knowledge
25
   as you sit here today that Mr. Towhey did a
```

```
1
   blessed thing in this case, do you?
          Other than what I've testified to right
2
   now, that's my testimony.
3
4
          MR. WOODWARD: I have nothing further,
5
   Your Honor.
          MR. SIGMAN: No questions, Your Honor.
6
7
           THE COURT: Mr. Fetterhoff?
          MR. FETTERHOFF:
8
                           No, sir.
9
           MR. BERGSTROM: I do, sir.
           THE COURT: Yes, sir.
10
11
                    CROSS EXAMINATION
12
   BY MR. BERGSTROM:
13
14
      Q
          Agent Speaks, when you and the group that
15
   you were with that evening arrived down at Room
   414, you were able to get into the main room of
16
   414, were you not, sir?
17
18
      Α
           Yes, I believe we were.
           But you were unable to get into the room
19
20
   that ultimately you found held the boxes,
21
   correct?
22
      Α
           Correct.
23
           That room was locked?
      Q
24
      Α
           Yes.
          Was it not? And how long was it, sir,
25
      Q
```

```
that you and this group of people waited outside
 1
 2
   of that particular room where the boxes
   ultimately were found before that door was
 3
 4
   actually opened?
           As I testified, it was anywhere from 45
 5
      Α
 6
   minutes to an hour, sir.
 7
       Q
           Okay. And the reason that you were
   waiting outside that locked room was because you
 9
   were waiting for Mr. Towhey to arrive?
10
           That's correct.
       Α
11
       Q
           And when Mr; Towhey arrived, who then
12
   unlocked that room?
13
           Mr. Towhey, I believe.
       Α
14
       Q
           And prior to that, nobody had been in
15
   that room that was in your presence?
16
       Α
           No, not to my knowledge.
17
           MR. BERGSTROM:
                           That's all I have, sir.
           THE COURT: | Any redirect?
18
           MR. SPROW: No, Your Honor.
19
           THE COURT: You may step down. Thank you
20
21
   very much.
22
           THE WITNESS:
                         Thank you.
23
           (Witness excused.)
24
25
```

1 THE COURT: Mr. Brown, what did you have additional-wise that you had planned to have 2 3 another one before hoon? 4 MR. BROWN: We have another one, Your 5 Honor. In all candor, I might be able to get the direct done before lunch, but I think it would 6 spill over to the afternoon. It's a matter now 7 whether you want to start or break for lunch 8 9 early. We're good either way. THE COURT: Why don't we break for lunch 10 11 now. We'll be back here then at quarter to one. 12 We'll start at quarter to one. 13 MR. BERGSTROM: I'm sorry. Who is the 14 next witness? I didn't catch that. 15 MR. BROWN: Agent Fiore. 16 (Court was held in recess at 11:40 a.m.) 17 18 19 20 21 22 23 24 25

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6	CERTIFICATION
7	
8	
9	I hereby certify that the proceedings and
10	evidence are contained fully and accurately in
11	the notes taken by me on the hearing of the above
12	cause, and that this is a correct transcript of
13	the same.
14	
15	
16	6/9/10 DUMAA S Sha/fu)
17	Date Brenda S. Shaffer, URMR
18	Official Court Reporter
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COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS

OF

: DAUPHIN COUNTY, PENNSYLVANIA

W.

:

ELMER L. BOWMAN : No. 63 MD 2010

BRETT 0. FEESE : No. 65 MD 2010

DONALD H. McCLINTOCK : No. 66 MD 2010

JOHN M. PERZ⊞ : No. 64 MD 2010

BRIAN J. PRESKI : No. 62 MD 2010

ERIC S. RUTH: : No. 69 MD 2010

JILL A. SEAMAN : No. 68 MD 2010

SAMUEL C. "BUZZ" STOKES : No. 67 MD 2010

PAUL E. TOWHEY : No. 70 MD 2010

JOHN R. ZIMMERMAN : No. 61 MD 2010

# TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

**VOLUME II** 

BEFORE:

HONORABLE WILLIAM C. WENNER

DATE:

TUESDAY, MAY 25, 2010

PLACE:

COURTRAIN NO. 1

DAUPHIN COUNTY COURTHOUSE HARRISEURG, PENNSYLVANIA

1	APPEARANCES:
2	
3	DONNA J. McCLELLAND, ESQUIRE
4	For - Defendant Bowman
5	JOSHUA D. LOCK, ESQUIRE GOLDBERG KATZMAN, P.C.
6	For - Defendant Feese
7	
8	SCOTT P. SIGMAN, ESQUIRE
9	For - Defendant McClintock
0	BRIAN J. McMONAGLE, ESQUIRE FORTUNATO N. PERRI, JR. ESQUIRE McMONAGLE, PERRI, McHUGH & MISCHAK, P.C.
11	For - Defendant Perzel
12	WILLIAM J. WINNING, ESQUIRE
13	MEGAN S. SCHEIB, ESQUIRE COZEN O'CONNOR
14	For - Defendant Preski
15	EVAN J. KELLY, ESQUIRE
16	For - Defendant Ruth
17  	WILLIAM FETTERHOFF, ESQUIRE
8	For - Defendant Seaman
19	ROBERT DONATONI, ESQUIRE
20	For - Defendant Stokes
21 22	TIMOTHY WOODWARD, ESQUIRE  LAW OFFICE OF TIMOTHY WOODWARD
23	For - Defendant Towhey
24	THOMAS A. BERGSTROM, ESQUIRE
25	For - Defendant Zimmerman

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attorney?

# PROCEEDINGS TUESDAY, MAY 25, 2010 12:48 p.m. MS. MCCLELLAND: If I may, while everybody's waiting, my client has to leave by about ten to four to pick up his children. waives his presence if the hearing continues beyond that, if that's acceptable. MR. BROWN: Mr. Bowman, you understand you have the right to be present for the entirety of the preliminary hearing? DEFENDANT BOWMAN: Yes. MR. BROWN; And you've had the opportunity to discuss your absence with your

DEFENDANT BOWMAN: Yes.

MR. BROWN: You're satisfied with your representation to this point?

> DEFENDANT BOWMAN: Yes.

MR. BROWN: And no one has forced or threatened you to leave the preliminary hearing early?

> DEFENDANT BOWMAN: No. sir.

It's a matter for the Court. MR. BROWN:

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THE COURT: Thank you.

MS. MCCLELLAND: Thank you.

MR. BROWN: Agent Fiore is next.

## ANTHONY FIORE,

called as a witness, being duly sworn, testified as follows:

## DIRECT EXAMINATION

### BY MR. BROWN:

Q Good afternoon, sir. Would you state your name for the record and spell your last name, please?

A My name is Anthony Fiore. First name is A-N-T-H-O-N-Y. My last name is Fiore, F as in Frank, I-O-R-E.

- Q And, Agent Fiore, you're one of the agents assigned to the House Republican Caucus investigation; is that correct?
  - A That's correct.
- Q There are a couple different areas I want to ask you about, Agent Fiore. First, are you familiar with someone by the name of Zain Kahn?
  - A I am.
  - Q And did --

MR. DONATONI: What was the name?

THE WITNESS: Zain Kahn, K-A-H-N is the 1 last name. First name is ZAIN. 2 BY MR. BROWN: 3 And Mr. Kahn is the head of variably 4 Q either Artist Forum, iConstituent, or 5 Constituents Direct, depending on the time frame 6 we're talking about? 7 That's correct. He's the CEO of those 8 Α 9 companies, yes. And was a request made to Mr. Kahn to 0 Q look into information regarding Greystone and 1 2 SKP? 3 Α It was. And did, in fact, the grand jury, through Q 4 the Office of Attorney General, receive a 5 response to that request? 6 It did. 7 Α And was that a written response? 8 Q 9 Α It was. To the best of your knowledge, Agent 0 Fiore, will Mr. Kahn be available to testify at 1 the trial of this matter? 2 3 He will, Your Honor. Α Agent Fiore, I'll show you what's been 4 Q 5 marked as Commonwealth's Exhibit 35 for

identification. Do you recognize that, if, in fact, you can see it with the glare in here?

- A Yes, I do recognize that.
- Q And is that the written response from Mr. Kahn?
  - A It is.
- Q Can you actually read it from where you are or would the paper copy be easier?
  - A I'll try.
- Q And what does Mr. Kahn indicate regarding whether or not his business Constituents Direct has ever done any business with an entity known as Greystone or SKP?
  - A (Reading:)

Dear Agent Fiore, we have received the subpoena to produce information concerning Graystone/Greystone/SKP.

Please be advised that neither I

Constituent nor any of its related companies have engaged in business with Graystone, Greystone, or SKP.

Should you require any further information, please feel free to contact me directly at 310-696-2261. We appreciate your time. Thank you.

Sincerely, Zain Kahn, CEO, iConstituent, LLC.

Q And the reason Greystone is there twice is one time it's spelled with an A one time it's spelled with an E?

A That's correct.

Q Agent Fiore, I now want to move to a different area. And that relates to what I believe Ms. -- either Ms. Flickinger or Lori Lochetto this morning referred to either as the night of the many boxes or the 4,000 boxes. You're familiar with that?

A I am.

Q What I want to show you are -- or what I want to ask you first is if you're familiar with the forthwith subpoena that was issued on February 29th of 2008 in regard to that particular part of the case.

A I am familiar with it.

Q Agent Fiore, I'm showing you what's been marked as Commonwealth Exhibit 36 for identification. Do you recognize that?

A I do.

Q And is this, in fact, true and correct copy of the forthwith subpoena that is at issue

1 here? 2 It does appear to be so, yes, sir. 3 Q Under number two it says, "You are further ordered -- " and what does it say after 4 5 that? 6 Α After that it says (reading:) 7 To appear and produce forthwith any and all campaign documents or 8 9 materials removed from Room BO2 in the basement of the Irvis Office Building 10 on February 26th, 2008, or during the 11 60 days preceding. You are further 12 ordered to disclose the location of 13 14 any and all other materials removed 15 from this location during the period described. 16 And this subpoena, was it actually served 17 Q 18 on February 29th of 2008? 19 Α Yes, it was. 20 On the flip side of Commonwealth 21 Exhibit 36 it indicates that Agent Robert 22 Drawbaugh served the subpoena on February 29th, 2008, at 2:30 p.m. Is that correct? 23 24 Α That's correct. And does it indicate upon whom Agent 25 Q

1 Drawbaugh served this subpoena? 2 Α It indicates that the subpoena was handed to Jill -- Jill Seaman, HRC paralegal. Now, Agent Fiore, you've done some 4 5 investigation into the week of February 25th through the 29th of 2008; is that right? 7 Α That's right. And some of the findings you've made to 8 Q date you've prepared in the exhibit form; is that 9 10 right? 11 Α That's correct. 12 Q And would you recognize the exhibit you 13 prepared if you saw it again? 14 Α I certainly would. 15 Q Agent Fiore, beginning with what I'm 16 showing you what was marked as Commonwealth 17 Exhibit 37 for identification, do you recognize 18 that? 19 Α Yes, I do. 20 Q And is this a true and accurate depiction 21 of the chart that you've prepared? 22 Α It is. Excuse me, Ken. Do you have a copy that I can look at or no? A hard copy? 23 24 Q Just for the lighting conditions it's 25 probably easier if you can actually see it up

1 here. 2 Α I apologize. Thank you. 3 Q Now, Agent Fiore, I want to start with 4 February 26th of 2008. What does your 5 investigation indicate occurred on the 26th? 6 On Tuesday, February 26th? 7 0 Yes. 8 Α On Tuesday, February 26th this document reflects that my investigation learned that a messenger had moved boxes from Room B2, and 10 11 that's in the Irvis Office Building, to Room 414, 12 which is in the main capitol, at the direction of 13 Lori Lochetto. 14 And also on the 26th of February, 2008, this document reflects that my investigation 15 16 learned that John Zimmerman -- a call is made 17 from his desk phone which is located in Room 414. 18 And that desk phone makes a call to HRCC, that's 19 the House Republican Campaign Committee, at 4:30 20 p.m. on that date. 21 And let me stop you there, Agent Fiore. Q 22 Α Sure. 23 414 is, at the time we're talking about Q 24 here, John Perzel's office? 25 Α Yes.

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And phone records for Zimmerman's desk
      Q
   indicate that there is a phone call made to HRCC
   about 4:30 p.m. on the 27th?
      Α
          That's right.
      Q
          Now, in that same box there's an
   indication of a person by the name of George
   Matthews. Are you familiar with him?
      Α
          I am.
      Q
          And to the best of your knowledge, will
   Mr. Matthews be available to testify in the trial
   of this matter?
      Α
          He will.
          And what does Mr. Matthews say, if
      0
14
   anything, about this phone call or a phone call
   that he receives around that time period --
          MR. MCMONAGLE: Objection, hearsay.
          MR. BROWN: Your Honor, this is a
   preliminary hearing. And under Commonwealth
18
   versus -- I think particularly this would be --
   Branch, evidence of -- or hearsay evidence is
   allowed at a preliminary hearing.
   already been direct testimony from Sheila
23
   Flickinger regarding this particular incident.
   Based on that, this Agent Fiore's certainly
25
   allowed to testify as to what Mr. Matthews told
```

him.

MR. MCMONAGLE: Rick and Branch don't have to do in this Court, have to do with items such as lab reports, chemist's testimony and the such where a representation is made and there has been some type of memorialization of that kind of evaluation.

Here we're talking about basic hearsay.

I have no objection to what Miss Flickinger told the agents, and she has already testified and been subject to cross-examination. But beyond that I do believe it exceeds the bounds of permissible evidence at this level.

MR. BROWN: Your Honor, under Branch at 437 A.2d 748, a Superior Court case from 1980, any hearsay statement can be introduced at a preliminary hearing if the -- if the witness is available for trial. This is certainly permitted under the law.

MR. BERGSTROM: Your Honor, I join the objection, by the way, on behalf my client John Zimmerman.

THE COURT: Is it possible to limit what's going to be questioned in regards to this Matthews man? I mean, clearly I think we all

```
1
   know some limited hearsay obviously can be
2
   accepted at the preliminary hearing.
3
   obviously -- I think where it's obviously not
   applicable if it's used merely to totally prove
5
   an issue of prima facie in and of itself.
6
           I don't believe Mr. -- I don't know.
7
   mean, I think we need to limit to some degree --
8
   I'm going to give you a little bit of latitude,
   but I don't know how far we're going to go.
10
          MR. BROWN: Understood.
11
          THE COURT:
                       Okay.
12
   BY MR. BROWN:
13
          Agent Fiore, what did Mr. Matthews tell
14
   you about the phone call that's depicted in the
15
   box for February 26th, 2008, at 4:30 p.m.?
16
          Specifically, Your Honor, Mr. Matthews
      Α
17
   indicates that he received a phone call at that
   time from someone, a male, who identified himself
18
19
   as working for -- or calling from the Office of
20
   John Perzel, and the male requested that HRCC
   take delivery of some boxes and would that be
21
22
   okay.
23
      Q
          Did Mr. Matthews recognize the male
   voice, according to what he told you?
24
```

Α

He did not.

2

3

4

5

6

7

8

10

12

13

15

16

17

20

21

22

24

25

Was Mr. -- did Mr. Matthews indicate whether he was familiar with the voice of anyone -- of any male who worked in John Perzel's 414 office during that period of time? Α He did. Q And what did he say? Α Mr. Matthews indicated that he knew the voice of and he knew personally Paul Towhey, and that the phone call made at that -- on that date and time was not Paul Towhey. He also indicated 11 that he knew the voice of John Perzel, and that that call was not made by John Perzel. Now, Agent Fiore, Commonwealth Exhibit 37 14 indicates one movement or more than one movement of boxes involving Rooms B2 and 414? Α That's correct -- I'm sorry. One or more than? 18 Α More than one. 19 And if you can explain to the Judge, Q based on Commonwealth's Exhibit 37, the movement of the boxes? Your Honor, on February 25th, my research 23 indicates that there was a movement of boxes by

House Republican Caucus messenger from B2 to 414,

again, at Lori Lochetti's direction. There was

also one on the 26th as we discussed at 3 -approximately 3:20 in the afternoon of that date,
again, from B2 to 414 at Lori Lochetti's
direction. And also on the 27th of February,
2008, at approximately 11 a.m. there's
information that a messenger moved boxes from 414
in the main capitol to the offices of the House
Republican Campaign Committee, again at Lori
Lochetti's direction.

Q I want to stick with February 27th at this point, Agent Fiore. The phone records that you reviewed of John Zimmerman's desk phone, do they indicate any calls that were made, let's say, to the HRCC on February 27th of 2008?

A Your Honor, there were three calls made from that phone on the 27th of February, 2008, three different times, 2:08 p.m., 2:31 p.m., and then in a little later in the evening, 7:35 p.m. again, from the desk phone assigned to John Zimmerman.

Q Now I want to move ahead, Agent Fiore, to that Friday, February 29th of 2008. The subpoena, according to Commonwealth Exhibit 36, was served at approximately 2:30 p.m. on that day?

A That's correct.

Q Did you review any records -- and I'll make it specific. Did you review any phone records regarding what happened on February 29th, 2008, after the forthwith subpoena was served on Jill Seaman?

A I did. Your Honor, I reviewed both cell phone records and land line phone records.

Q And what did your review find?

A Your Honor, I looked at Paul Towhey's cell phone records for that day. In particular, around that time after 6 p.m. or 6:30, there was a number of calls that are placed by Mr. Towhey's cell phone. And it's a state issued cell phone. And the records indicate that there were four calls between Mr. Towhey and Mr. Zimmerman after 6:30 p.m. on that date, the 29th of February.

There was also five calls to the phone that is registered to the Law Offices of Brett Feese. There are six calls to the -- to John Perzel, either his -- phones either listed to his -- his cell phone -- I believe just his cell phone, and then also Lori Lochetto, there were five calls to or from Mr. Towhey and Miss Lochetto during those hours as well.

```
1
      Q
          And I'm sorry, Agent Fiore, you might
2
   have mentioned this and maybe I just didn't hear.
3
   Approximately what time do all these calls going
   back and forth actually start?
4
5
           They start after 6:30 p.m.
6
      Q
           And you were here for Agent Speaks's
7
   testimony?
8
      Α
           Yes, I was.
           And that would be after Agent Speaks
9
      Q
10
   testified that he and Mr. Fina entered the
11
   capitol complex pursuant to at least
12
   Commonwealth's Exhibit 36, the forthwith
13
   subpoena?
14
      Α
           That's my understanding, yes, sir.
           MR. BROWN: Court's indulgence for a
15
16
   moment, please. (Pause.)
17
   BY MR. BROWN:
          Agent Fiore, I guess just for the record
18
      Q
19
   purposes more than anything, the person that you
   identified as Jill Seaman, you see her in the
20
21
   courtroom today?
22
      Α
           I do.
23
      Q
           Can you point her out for the Judge.
24
   please?
25
     . A
          Sure. She's in the back row, Your Honor.
```

```
Q
          The person that you identified as Paul
 2
   Towhey, do you see him in the courtroom today?
 3
           MR. WOODWARD:
                          Stipulate, Your Honor.
 4
           THE COURT:
                      Okay.
                              Thank you.
 5
          BROWN:
   BY MR.
 6
      Q
          The person you've identified as John
 7
   Zimmerman, do you see him in the courtroom?
 8
      Α
                  He's in the back row as well.
           Thank you. Now, Agent Fiore, one or two
 9
      Q
10
   last questions about the phone calls. Did you
11
   perform any analysis to determine whether this
   was a normal number of calls between these people
12
13
   or an abnormal number of calls?
14
           MR. WOODWARD: I'm going to object to
15
   that, Your Honor. I don't know, he's an expert
   in telephone calls?
16
           MR. FETTERHOFF: Right, we're not talking
17
18
   about --
19
          MR. LOCK: I join in the objection.
           MR. BROWN: I'll ask it a different way,
20
21
   Judge.
          THE COURT:
                       Okay.
22
23
   BY MR. BROWN:
24
      Q
          You reviewed the cell phone records and
   the desk line records for that particular
25
```

```
agreement, is that right, Agent Fiore?
1
2
       Α
           I did, yes.
3
       Q
           And specifically for the people you've
   already mentioned?
4
      Α
5
           That's correct.
6
       Q
           Did you also review cell phone records
7
   for those same people for a different period of
   time?
8
9
           I did.
       Α
10
       Q
           And what other different period of time
   are we talking about?
11
12
      Α
           Months prior and months after.
13
           And what did your analysis reveal?
14
           Your Honor, it appeared to me that there
       Α
15
   was an inordinate -- a higher -- significantly
   higher number of calls during this day than there
16
   were in looking at the other time periods.
17
18
           MR. BROWN:
                       Thank you, Agent Fiore.
19
   Tender for cross.
20
                    CROSS EXAMINATION
21
   BY MR. MCMONAGLE:
22
           Agent Fiore, good afternoon.
       Q
23
       Α
           Good afternoon.
           Let me kind of work backwards from your
24
       Q
25
   trained eye on these phone calls.
```

```
1
      Α
           Okay.
2
           A deputy attorney general shows up at the
      Q
3
   capitol, correct?
4
      Α
           That's correct.
           Is that -- that's Mr. Fina, correct?
5
      Q
6
      Α
           Yes.
7
      Q
           With agents from the Attorney General's
8
   office, correct?
9
      Α
           That's correct.
10
      Q
           With subpoena, correct?
11
      Α
           That's right.
12
      Q
           And not only shows up, but asks to go in
   to a room to look at boxes, correct?
13
14
      Α
           That's correct.
15
           And then goes upstairs, they have Mr. --
       Q
   I think it's Mr. Towhey come in a snowstorm to
16
   get back to the capitol to open up his office,
17
18
   correct?
19
      Α
           That's correct.
20
      Q
           That's pretty significant event?
21
      Α
           Yes, sir.
           So you'd expect, I would assume,
22
      Q
23
   Mr. Towhey, after he accommodated you, cooperated
   with you, to call up Mr. Zimmerman, Mr. Feese,
24
25
   Mr. Perzel, and Ms. Lochetto about what
```

transpired? That's not unusual, is it at all, right?

A I'm not sure if it's unusual or not. I can say that it -- cell phone records are -- in and of themselves may mean something, but in conjunction with other events they may mean something more. In my looking at cell phone and land line records --

Q Yeah.

A -- these -- these types of records will -- may indicate a certain -- will indicate association between individuals and they may indicate interest or involvement between individuals around -- around a significant -- around an event.

- Q Sure. I mean, the event here was the Attorney General's office coming to the capitol with a subpoena?
- 19 A That's right.
- Q That's a big event. That's big ticket item, right?
  - A Absolutely.
  - Q Anybody picked up the phone and said, hey, I got the AG's office, I got -- Fina, does he usually go out and serve subpoenas, by the

1 way, Deputy Fina? I don't know. 2 Α 3 Q So there's absolutely nothing, would you 4 agree with me, that we can glean from that phone call other than maybe the obvious, which is Mr. Towhey saying we just got served a subpoena 7 by the Attorney General's office, correct? A. That's correct. 8 Now let's go to the 9 Q All right. 10 beginning. 11 I looked at this chart. And who asked 12 you to prepare this chart? 13 Α It was a product of my own doing. No one 14 asked me to prepare this chart. So you came up with it on your own? 15 Q 16 Α Yes, sir. 17 All right. Let's go to the first block Q 18 on the chart, February 25th, 2:40 p.m. messenger 19 moves boxes from Room 4 -- B2 to Room 414 at Lori Lochetto's direction. Have I read that directly? 20 21 Α Yes, sir. 22 Didn't something happen before then? Q 23 Well, let me be more clear. Didn't Miss Lochetto

tell us under oath today that she got a phone

call from a Jason Weiser who was down there and

24

25

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q

```
they were moving boxes because of construction.
Did you hear that testimony?
   Α
       Yes, I did.
   Q
       And when they got down there, they went
into the room and they found that there was
campaign material. Did I get that correct?
   Α
       Yes, sir.
   Q
       Now, you didn't put that in the box?
   Α
       I didn't put what, sir? I don't
understand your question.
   Q
       You didn't put in the box what happened
before the messenger moved the boxes from B2 to
414 at Lori Lochetto's direction; is that fair,
you didn't put that in the box?
   Α
       That's correct.
                        I did not depict that.
   Q
       But we certainly heard from Ms. Lochetto
today what inspired that move, is that fair?
   Α
       Yes, sir.
       All right. And Ms. Lochetto then told us
that after the messenger moved the boxes -- and
that looks like you've got 2:40 p.m.
                                       Is that the
exact time that the boxes were moved?
   Α
       That's the time that appears on the
messenger logs.
```

Okay. The mext time that we have here

```
1
   that's significant on the 25th is what time?
2
           I'm not sure what you're referring or
      Α
3
   asking me, sir.
           Well, I'm looking on the 25th.
4
                                            It says
5
   boxes containing campaign material witnessed in
6
   Room B2 Irvis Office Building?
7
           That's right.
      Α
8
      0
           What does that refer to?
9
           That refers to the incident that is again
   referenced in the 28th of February, the box next
10
   to it, the legislative employee approaches the
11
   OAG with information on the presence of these
13
   boxes with campaign content within B2. So that
14
   event occurs prior to and it occurs on the 25th.
15
      Q
           What occurs on the 25th?
           The witnessing of these boxes.
16
      Α
17
      Q
           By who?
18
      Α
           By this legislative employee, and I
19
   assume others.
20
      Q
           Well, who's the legislative employee?
21
      Α
           Her name is Julie Orris.
22
      Q
           Okay.
                 And the boxes that we're talking
23
   about are the same boxes that Miss Lochetto moved
24
   from B2 to 414, correct?
25
      Α
           Yes.
```

correct?

```
Okay. And according to Miss Lochetto,
1
      Q
2
   those boxes contained a variety of items,
3
   correct?
4
      Α
          Yes.
5
      Q
           And according to her, there was campaign
6
   material in some of the boxes, correct?
           That's my understanding.
7
      Α
8
      Q
           She made real clear that the campaign
   material that she was referring to was stationery
10
   and I think envelopes, correct?
11
      Α
           That's correct.
12
           From 2004, correct?
      Q
13
      Α
           Yes, sir.
           And that that material was ultimately
14
      Q
15
   relocated to where ultimately they're taken to,
16
   which is over in the HRCC, correct?
17
      Α
           That's correct.
           So we're talking about this same thing
18
       Q
19
   that Ms. Lochetto was talking about on this
20
   chart, am I right?
21
      Α
           That's right.
22
       Q
           So all of this, this chart, all that's
23
   been prepared, the discussion we're talking about
   is 2004 stationery and envelopes; is that
24
```

```
1
          The material discussed is exactly that,
2
   yes, sir.
          All right. Now, were you present for the
3
4
   execution of the subpoena?
5
      Α
          No.
          Were you at the capitol that day?
6
      Q
7
      Α
          No.
          MR. MCMONAGLE: Give me a brief moment,
8
   Judge. (Pause.) Thank you.
9
          THE COURT: | Mr. Winning.
10
           MR. WINNING: I just have a couple
11
   questions, Your Honor.
12
   BY MR. WINNING:
13
14
      Q
           Agent, referring to Government Exhibit 35
15
   for one minute if you would, please, do you see
   it, sir? The second line there's a reference to
16
   "neither iConstituent nor any of its related
17
18
   companies."
19
           Do you know what related companies are
20
   being referenced here.
21
           His companies, Mr. Kahn's company went
22
   through various iterations. To my knowledge it
23
   was at one time known as Constituents Direct.
                                                    Ιt
24
   was known as Artists Forum.
25
          Artists Forum?
      Q
```

1 Α Artists Forum. Q Forum. 3 Α It was known as iConstituent, and there was one other that I cannot recall except for the 4 name contained political something. 5 6 Q So there were roughly four or five 7 related entities? At least that I know. Q 9 And the purpose of this letter, I take 10 it, is to say to you or to suggest to you that 11 none of these companies have done any business or transacted any business with either Greystone or 12 13 SKP? 14 Α Yes. 15 Q Okay. And that would mean that none of 16 these entities have provided any data or information or received any money at all from SKP 17 18 or Greystone? 19 Α That's my understanding, yes, sir. 20 MR. WINNING: Thank you, That's all I 21 have. THE COURT: Mr. Lock. 22 23 BY MR. LOCK: You weren't suggesting, were you, Agent 24 Q 25 Fiore, when you indicated that because telephone

communications can suggest interest or involvement of individuals around an event that that event is necessarily criminal in nature?

A No, I was not.

Q And, indeed, you focused your analysis on telephone calls placed by and to particular individuals in whom you had an interest, which is to say the individuals who were named on your exhibit; is that right?

A That's correct.

Q There was a great deal of additional telephone communication with other people conducted by some of the named parties, people with the Attorney General's office, and various others, on, for example, February 29th; isn't that right?

A I don't have the records in front of me, but certainly there were other calls.

Q Did you review the universe of relevant phone records for, for example, February 29th?

A I'm not sure I know what you mean by universe.

Q All of them.

A Again, I'm not sure what that means. In relation to the people mentioned here or listed

1 here, the answer is yes. 2 Well, it means, for example, that without Q 3 even having gotten through all of these notes. that Mr. Fina had communications, so I take that 4 5 to mean an interest or involvement -- an interest 6 in or involvement with individuals around the 7 event at various times between 2 p.m. starting at 8 2 p.m. and continuing at least until approximately 10 p.m. on the 29th. Does that 9 10 sound substantially accurate? 11 Α Yes. 12 Q And then there were calls to HRC 13 attorneys or at HRC and they're not listed on 14 here, are they? 15 Α I'm not aware of those calls. But if 16 they occurred, they certainly are not listed 17 here, yes, sir. 18 Thank you, sir. I have MR. LOCK: 19 nothing else. 20 Thank you, sir. I have no MR. DONATONI: 21 questions. 22 BY MS. MCCLELLAND: 23 You agree, would you not, that Al Bowman Q has nothing to do with Greystone or SKP; those 24 companies involve Mr. Preski, Mr. Perzel and --25

```
I don't -- I don't think he does, no.
   don't have that information. I don't think he
3
   does.
          You don't think he -- you think he has
4
      Q
5
   nothing to do with those companies, correct?
6
          As I sit here, I don't recall any
      Α
7
   connection between Mr. Bowman and those
8
   companies.
9
           MS. MCCLELLAND:
                            Thank you.
           MR. KELLY: Afternoon, Agent. I have no
10
11
   questions.
12
   BY MR. WOODWARD:
          Agent Fiore, this February 29th is a
13
      Q
14
   Friday, is it not?
15
      Α
           It is.
16
      Q
           And 6:30 is 6:30 on a Friday night.
17
   many people in the capitol that night, is there?
           I'm not there, sir. But I would imagine
18
      Α
19
   no.
20
      Q
           It's like any other business, not many
21
   people in at 6:30 on a Friday night, true?
22
      Α
           Fair enough, yes, sir.
23
       Q
           Now, sir, you have no knowledge
24
   whatsoever that Mr. Towhey knew of the existence
25
   of the February 29th subpoena, do you?
```

A I don't know when he becomes aware of that. I certainly don't have interaction with Mr. Towhey at that time.

Q Now, you also don't know, sir, researching these cell phone records, Mr. Towhey's cell phone records, how many of these calls to Mr. Feese, Ms. Lochetto, Mr. Zimmerman, and Mr. Perzel went unanswered, do you?

A I don't.

Q So of the 20 calls that you referenced on your printout, you don't know how many of those 20 calls went unanswered, do you?

A I don't recall. Again, I don't have the records specifically, but as I do recall, most, if not all, had some time associated with them, because the length of the call is associate -- is listed. But my understanding is that if a call goes to voice mail it may list one minute, but obviously a connection is not made between two people, other than the voice mail.

Q So if a call goes to voice mail, the record's going to reflect a minute. You agree with that?

A Yes.

2

3

4

5

6

7

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9

10

11

12

13

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22

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24

25

So, for example, the five calls that Q Mr. Feese, if I would have told you my calculation of those five calls show a total of nine minutes, many of which refer to one minute, would you conclude that a number of the calls to Mr. Feese alone went unanswered?

If that's the case, sir, that's a possibility.

Q Now, sir, you were asked a question regarding your analyzing calls for a different period of time for Mr. Towhey's phone. Do you remember that question?

Α No.

> Q You weren't:--

Α I don't remember the question you're referencing.

Okay. I believe Mr. Brown asked you Q something, and correct me if I'm wrong, whether or not you analyzed calls on Mr. Towhey's cell phone for other periods of time to see if there were the same number of calls to these five individuals.

I do recall --Α

Q Do you recall that?

I do recall that, yes, sir. Α

4

5

7

```
Q
          Would you agree with me that those other
2
   periods that you analyzed, the fourth in demand
   for the Attorney General's office wasn't in
   Mr. Perzel's office at the time, was he?
      Α
           Not to my knowledge, no.
           Now, sir, you've -- I know you very well.
6
      Q
   You and I know each other?
8
      Α
           Yes, sir.
           Prior to this you worked for Cheltenham
      Q
10
   Police Department, did you not?
11
      Α
           I did.
                   I did.
12
      Q
           So you're certainly familiar with
13
   paramilitary organization and the chain of
14
   command that exists within those organizations,
15
   true?
16
           Yes, I am.
           And you knew at the time that Mr. Perzel
17
18
   was Mr. Towhey's boss, true?
19
           That's correct.
      Α
           So you don't find it unusual that
20
      Q
21
   Mr. Towhey would be calling his boss on a Friday
22
   night to alert his boss that the fourth in
23
   command in the Attorney General's office was in
   his office?
24
25
      A I don't find that unusual at all.
```

```
1
      Q
          And you wouldn't find it unusual for
   Mr. Towhey to be calling Mr. Zimmerman who also
2
3
   shares an office with Mr. Perzel?
 4
      Α
           I don't find that unusual.
5
      Q
           Or Miss Lochetto who also shares an
   office with Mr. Perzel?
6
 7
           In and of itself I find that not unusual,
      Α
8
   ves, sir.
9
          And Mr. Feese at the time, what was
      Q
   Mr. Feese's position on February 29th of 2008?
10
11
      Α
           I believe he was chief counsel for the
12
   HRC.
          So would it be unusual for Mr. Towhey,
13
14
   now knowing that the Attorney General is at
15
   Mr. Perzel's office, for him to call the counsel,
16
   alert the counsel to what was going on?
17
           I wouldn't find that unusual.
           MR. WOODWARD: I have nothing further,
18
19
   Agent Fiore. Thank you.
           THE WITNESS: Thank you.
20
21
           MR. SIGMAN:
                        No questions, Your Honor.
   BY MR. FETTERHOFF:
22
23
      Q
           Agent Fiore, just to follow up on what --
24
   Mr. Woodward is fortunate because he has these
25
   records, his phone records in front of him and of
```

```
1
   course you don't.
 2
           Do I assume that you reviewed these, the
 3
   exact records, and the Office of Attorney General
 4
   is in possession of those records?
 5
       Α
           That's correct, sir.
 6
       Q
           But we have the chart and not the records
 7
   today; is that correct?
 8
       Α
           That's exactly true, sir, yes.
 9
       Q
           So that being the case, I have to ask you
   in that lower box on the lower right-hand corner
10
11
   concerning Miss Seaman's, Mrs. Seaman's calls,
12
   first of all, it says, "Show these contacts."
13
   Contacts, C-O-N-T-A-C-T-S, is kind of an
14
   ambiguous -- calls. Does that mean calls
15
   received or calls made or both?
       Α
16
           Both.
17
           So, for instance, the reference to the 12
   contacts with Mr. Feese, that might have been six
18
19
   calls one way and six the other; or five one way,
   seven the other, or whatever?
20
21
       Α
           It may have been that, yes, sir.
22
       Q
           Do you remember offhand what?
23
       Α
           I don't.
           Now, do you remember -- because just
24
       Q
```

based on this chart, not based on the actual

phone records, it might show even additional calls made by some of these people to others, right?

A Sure.

Q Do you recall how many times Mrs. Seaman tried to get representative -- or then -- I'm sorry, then-Chief Counsel Feese or Counsel Feese tried to get Miss Seaman and could not get through because of these other phone calls or some other reason?

A I don't have that information, sir.

Q I mean, 12 calls are listed here just between Mr. Feese and Mrs. Seaman. Don't you think it would have been relevant to indicate -- I mean, this is evidence going in here. We don't have the actual records. Don't you think it would have been fair to indicate how many of these calls actually were successfully connected? I mean, 12 seems like a high number, unless they're not real calls.

A I'm not sure that any of them were not connected. I counted 12 instances of contact between one -- one direction or the other.

That's the number I placed on it

24 That's the number I placed on it.

Q But you already explained --

```
1
      Α
          Yes.
2
           -- that some of those calls may have gone
      Q
3
   to voice mail, right?
4
           It's very possible, yes, sir.
      Α
5
      Q
           Now, what happens, I don't even know, to
6
   be honest, what happens if one cell phone calls
7
   another, you don't even wait for a voice mail,
8
   you just click it off? Is there a charge for
9
   that?
          Is that one minute charge also?
10
      Α
           I don't know. I don't know, sir.
11
      Q
           If could be, right?
12
      Α
           It's possible. It could not be, too.
13
      Q
           Now, do you know, in fact, that
14
   Mrs. Seaman -- the subpoena was served at 2:30 on
15
   Mrs. Seaman personally, right?
16
      Α
           That's my understanding, yes, sir.
17
      Q
           And that's what Exhibit 36 indicates?
18
      Α
           Yes, sir.
19
           Now, by the time Mr. Fina and Mr. Speaks
      Q
20
   and whoever else was with him show up at 6 p.m.,
21
   right?
22
      Α
           That's right.
23
      Q
           Now, are you aware of the number of calls
24
   between Mr. Fina and Mr. Feese that were made in
25
   an effort to set that time up and also just
```

discuss the whole problem?

- A I am not aware of those calls, no.
- Q Well, might that be on this chart, the calls between Mr. Feese and Mr. Fina? Mr. Fina is a player and probably now a witness.
  - A I don't understand your question, sir.
- Q Well, how many calls were made, or contact as the chart says, between Mr. Fina and Mr. Feese between 2:30 p.m. and 6 p.m. when Mr. Fina physically appeared?
  - A I do not know the answer to that.
- Q Now, you're aware that Mr. Fina was in multiple -- had multiple phone calls with K&L Gates, any number of attorneys that were there?
- A I'm not aware of that at all, sir. I'm not privy to that. I wasn't aware of that.
- Q Well, those are phone calls that might be on a chart, right?
- A I suspect that they could have been included, yes, sir.
- Q Now, are you aware that many of the phone calls -- that Mrs. Seaman had the cell phone after 6 p.m. when Mr. Fina arrived in the company of the agents, many of those phone calls that Mrs. Seaman was making she was making right there

in the presence of Mr. Fina and the agents? 1 2 you aware of that? I'm not aware of that, sir. 3 4 Did you interview Mr. Fina? Did you take 5 a statement from him? 6 Α No. 7 Now, were you aware that Lori Lochetto, Q who testified here today, could not be reached to 9 ask her to come back to the office? 10 I -- I don't know that for sure, sir. 11 No, I don't. I'm not aware of that. 1.2 Q But you are aware from either reports 13 that she was not present at any point after 14 6 p.m. in the capitol? 15 I believe that's accurate. She was not Α 16 present. 17 Q All right. So the arrangement was, since 18 Mr. Perzel was an elected representative and a high official of the House of Representatives, 19 20 that the Attorney General's office was simply not 21 going to be permitted to enter that room unless 22 there was a representative of Mr. Perzel there, 23 right? I'm not aware of that, sir. I'm not 24 Α 25 aware of the arrangement.

Mr. Zimmerman -- were you aware whether or not any of these seven calls, assuming some of them did go through, were made in an effort, first, to locate Mr. Zimmerman and then to explain the time and then to explain to him after the time had been changed what time he was supposed to come because Mrs. Lochetto couldn't come?

A You're referring, sir, to the Seaman calls?

Q Yes.

A My understanding, and I don't have the records in front of me, but the seven calls referenced next to Mr. Zimmerman's name were calls, as I recollect, in one direction. They go from Mr. Zimmerman to Miss Seaman.

Q Right. He ultimately did come in at or after 6 p.m., right?

A Yes.

Q He opened the door and let people in to Mr. Perzel's office; is that right?

A I wasn't there. I don't -- I don't have that information.

Q Okay. Do you think he showed up at 6 p.m. because he had a vision or do you think

```
1
   somebody told him what time had been arranged
2
   between Mr. Fina and everybody else?
3
      Α
           I would imagine that someone notified
   him.
4
5
           MR. FETTERHOFF: One minute. (Pause.)
6
   BY MR. FETTERHOFF:
7
          The attorney for K&L Gates, Jack Krill,
      Q
8
   you're familiar with him?
9
      Α
          Yes, sir.
          He at that time was the principal outside
10
      Q
11
   counsel for the House Republican Caucus; is that
12
   correct?
13
           That's my understanding, yes, sir.
14
           Do you know how many times Mr. Krill that
15
   evening after 6 p.m. borrowed Mrs. Seaman's phone
   in order to call Chief Counsel Feese or vice
16
17
   versa?
18
      Α
           I have no idea if that's -- if that
19
   occurred. And I don't know how many times if it,
20
   in fact, did occur.
           MR. FETTERHOFF: That's all.
21
                                          Thank you.
           THE WITNESS: You're welcome.
22
23
           THE COURT: Mr. Bergstrom.
   BY MR. BERGSTROM:
24
           Good afternoon, Agent Fiore. I'd like
25
       Q
```

```
you to look again, sir, if you would, at the
 1
   subpoena at issue about which you've testified.
 3
   Do you have that in front of you, sir?
 4
      Α
           No, I don't.
 5
           MR. BROWN: We'll put it up.
6
   BY MR.
          BERGSTROM:
 7
      Q
           This is the subpoena that you -- that
8
   somebody served on February 29th, correct?
9
      Α
           Yes, that's correct.
10
           At about 2:30 in the afternoon?
      Q
11
      Α
           That's my understanding, yes, sir.
12
      Q
           Okay. And it requires someone to appear,
13
   does it not, before the grand jury on March
14
   the 4th, correct?
15
      Α
           It does, yes, sir.
16
      Q
           And does it also require that somebody to
17
   bring with him or her the records that are set
18
   forth in Subparagraph 2?
19
      Α
           I'm not sure what that means, sir.
20
      Q
          You don't know?
21
           I don't.
      Α
22
      Q
           Okay. But it could very well mean that
23
   the person, whoever is the custodian of the
24
   records, would be required to appear on
25
   March 4th, as per the subpoena, and to bring with
```

```
1
   him or her the records that appear in
2
   Subparagraph 2?
           I suspect that's true. My understanding
4
   of a forthwith subpoena is that they are to be
   produced at that time.
6
           February 29th was the last day of the
      Q
7
   month?
8
      Α
           Yes, sir.
9
      Q
           It was after 6 p.m. on a Friday night?
10
      Α
           Right.
11
      Q
           And do you know why the date March 4th is
   inserted in there, sir?
12
13
      Α
           I have no idea, sir.
14
      Q
           Do you know who put that date in there?
15
      Α
           I have no idea.
16
           And do you know whether or not they meant
      Q
17
   that these records would be produced on the
   fourth?
18
19
           I don't know what they meant.
      Q
           Okay. Other than serving the subpoena on
20
21
   the custodian of records, I believe the back of
22
   the subpoena would reflect it was served on HRC
23
   paralegal Jill Seaman?
24
      Α
           Yes, sir.
           Are you aware, sir, whether anyone else
25
      Q
```

```
actually saw this subpoena?
1
 2
       Α
           I am not aware of who saw this subpoena.
 3
       Q
           So you don't know?
       Α
 4
           I don't know.
 5
       Q
           So as far as you know, the only person
 6
   that saw this subpoena was Miss Seaman, if she,
7
   in fact, saw it and reviewed it?
8
           That's correct.
9
           The telephone records that you have
10
   reviewed of Mr. Towhey --
       Α
11
           Yes, sir.
12
       Q
           -- for the 29th, I think you said, of
13
   February?
14
       Α
           Yes, sir.
15
       Q
           And you have those in front of you, sir?
           I do not have the cell phone records.
16
       Α
17
   have the Exhibit 37.
18
       Q
           Which is -- which is which exhibits, sir,
19
   the chart?
20
       Α
           The chart, yes, sir.
21
       Q
           Okay. I've got the chart. Your exhibit
22
   shows that there were four calls to
23
   Mr. Zimmerman?
24
      Α
           There were four contacts between
   Mr. Towhey and Mr. Zimmerman. The direction I
25
```

```
don't know from looking at this chart.
1
   actual records would reflect the direction of the
2
3
   calls.
          Did you actually review the records, sir?
4
      Q
5
      Α
           I did.
           Okay. So that I've got -- I've got the
6
      Q
   Verizon records for Mr. Towhey in my hand right
7
         Could I show them to you?
8
9
      Α
          Yes, sir.
           Will you be able to recognize them if I
10
      Q
11
   show them to you?
12
           I think I would.
      Α
13
       Q
           Okay. (Pause.)
           MR. BERGSTROM: May I question from here
14
   for the moment?
15
16
           THE COURT: Sure.
17
   BY MR. BERGSTROM:
18
      Q
           Agent Fiore, let me show you Mr. Towhey's
   Verizon wireless bill. And I would direct your
19
20
   attention to February 29th at 6:31 p.m. and 6:41
21
         Do you see those entries?
   p.m.
22
      Α
           Yes, sir.
23
       Q
           And does that appear to be a phone record
   from Mr. Towhey's phone to Mr. Zimmerman's phone?
24
25
           I don't have Mr. Zimmerman's phone
```

```
number, and I don't recall it. But I see that
1
2
   there's two calls to the same number at that
3
   time. But I don't know if -- I just don't
4
   know -- I don't have his --
5
          I'll tell you that it is.
      Q
6
      Α
          Okay.
7
      Q
          Okay. So there's two on the 29th at 6:31
   p.m. and there's another one at 6:41 p.m.
      Α
          Okay.
10
      Q
          And then let me go over to the next page
11
   and show you. There are two other calls on here,
12
   and I would direct your attention to the call at
13
   8:17 p.m., and then there's another call at 8:36
14
         Do you agree with me, sir?
   p.m.
15
      Α
          Yes, sir.
           Okay. The 8:17 call I think is two
16
      Q
17
   minutes and then the 8:36 minutes is actually
18
   only one minute, right?
19
      Α
           I didn't take notice, but I'll take your
   word for it.
20
           Okay. Let me show it to you.
21
      Q
22
      Α
           Okay, sir. Yes, sir.
           Two minutes and one minute.
23
      Q
24
      Α
           Yes, sir.
           Now, the timing of these telephone calls
25
      Q
```

```
are all after 6 p.m., are they not?
1
2
      Α
          Yes, sir.
3
      Q
          And do you !- were you here this morning
4
   when Agent Speaks testified?
5
      Α
           I was.
6
      Q
          And you remember Agent Speaks testifying
7
   that from around 6 p.m. on that day he, along
   with two lawyers, a Mr. Krill and a Mr. Bibikos,
9
   along with himself and a police officer were all
10
   together in this group of people that evening,
11
   correct?
12
           I'm not sure of his testimony. And if
13
   it's reflected accurately in your description,
14
   sir, I don't know.
15
      Q
           Well, were you in the courtroom this
16
   morning when he testified?
           I was. I absolutely was.
17
      Α
18
      Q
          You were?
19
      Α
          Yes, sir.
20
       Q
           And you remember him saying that from --
21
   from roughly 6 p.m. on until sometime near 10:00
22
   this group was Mr. Zimmerman; Mr. Krill, a
23
   lawyer; Mr. Bibikos, a lawyer; himself, an agent,
24
   a special agent?
25
       Α
           Yes, sir.
```

And I think there was a police officer in 1 Q 2 that group as well? 3 I don't remember anything about a police 4 officer, sir. And I don't know which time these 5 individuals were there, if they were all there together from beginning to end or if there was 7 movement and someone left. I'm not sure. I -- as I recall, sir, there was no mention of a 9 police officer, that I can recall. 10 Okay. But it's pretty clear, is it not, Q 11 sir, that on the basis of Special Agent Speaks's 12 testimony that he was there that evening and he 13 was there for a purpose, was he not? 14 Α Yes, he was. 15 Q And he was there with a Deputy Attorney 16 General Mr. Fina, correct? 17 Α That's correct. And then Mr. Zimmerman was in that group 18 Q and that the other two lawyers were in that 19 20 group? 21 Α That's my understanding, yes, sir. 22 And if these phone calls are coming in 23 from Mr. Towhey while all of these people are together, right? 24

25

MR. BROWN: Your Honor, at this point I'm

```
going to object. I think that actually
1
 2
   mischaracterizes Agent Speaks' testimony.
 3
           THE COURT: Mr. Bergstrom, can we move
   this along, please?
4
5
           MR. BERGSTROM: Yes, sir.
   BY MR. BERGSTROM:
6
 7
       Q
           The chart that you've identified, Agent
   Fiore, and the top part of the chart there says a
   Zimmerman desk phone contact.
9
10
       Α.
           Yes, sir.
11
       Q
           And according to your testimony earlier.
12
   Mr. George Matthews says he spoke to a male,
13
   correct?
14
       Α
           That's correct.
15
       Q
           Could not identify who that male was?
16
           That's correct.
      Α
17
      Q
           The male did not identify himself?
18
      Α
           That's correct.
19
       Q
           And Matthews himself doesn't know who it
20
   was?
21
           That's correct.
      Α
22
       Q
           And the call is made apparently on
   February 26th at 4:30 p.m., correct?
23
24
      Α
           That's right.
25
       Q
          Which is a full two days plus two hours
```

```
1
   before the subpoena is served, correct?
           Yes, sir, roughly, three days.
 2
      Α
 3
           MR. BROWN: I'm sorry. What was the last
 4
   part?
          THE WITNESS: That was three days before.
           MR. BERGSTROM:
6
                           Thank you.
                                        I have
7
   nothing further.
           THE COURT: Anything?
8
9
           MR. BROWN: No, Your Honor.
10
           THE COURT: You may step down. Thank you
11
   very much.
12
           MR. BROWN: Agent Soop is next.
13
14
                      ROBERT SOOP,
   called as a witness, being duly sworn, testified
15
16
   as follows:
17
                   DIRECT EXAMINATION
18
   BY MR. BROWN:
           Good afternoon. Would you state your
19
      Q
20
   name and how you are employed, please?
21
                 My name is Robert Soop, S-0-0-P,
          Yes.
   and I'm a employed as a supervisor special agent
22
   for the Office of Attorney General.
23
24
      Q
          And, Special Agent Soop, you've
25
   participated in the grand jury investigation
```

```
1
   involving the House Republican Caucus; is that
 2
   right?
 3
      Α
           That's correct.
 4
      Q
           And in that regard you've reviewed
 5
   certainly e-mails as well as certain campaign
   finance expenditures; is that right?
 6
 7
      Α
           That's correct.
           And would you recognize those e-mails if
 8
      Q
9
   you saw them again?
10
           Yes.
      Α
11
      Q
           Agent Soop, I'm going to first show you
12
   what's been marked as Commonwealth Exhibit 38 for
   identification, an e-mail dated April 12th, 2005.
13
14
   Do you recognize that?
15
      Α
           Yes, I do.
16
      Q
           And the e-mail is from whom and to whom?
17
      Α
           It was from Paul Towhey and it is to
18
   Kevin Curtin and Eric Ruth.
19
      Q
           And this is -- and this particular
   e-mail, according to -- according to the e-mail,
20
   April 12th was a Tuesday; is that right?
21
22
      Α
           That's correct.
23
      Q
           Now, Paul Towhey, do you see him in the
24
   courtroom today?
25
           MR. WOODWARD: I'll stipulate he's right
```

```
1
   here.
2
   BY MR. BROWN:
3
      Q
          Thank you. Eric Ruth, do you see him in
   the courtroom?
4
                       Same stipulation, right here.
5
           MR. KELLY:
           MR. BROWN:
6
                       Thank you.
7
   BY MR. BROWN:
8
      Q
           Now, one of the people that this e-mail
9
   Towhey sends to is Kevin Curtin. Who's that?
10
      Α
           He's an employee of the House Republican
11
   Caucus in the information technology section.
12
      Q
           And the subject is Blue Card idea. And
   there is an attachment, "My Blue Card dream come
13
14
   true." Is that right?
15
           That's correct.
      Α
16
      O
           And the attachment is actually a printout
17
   of the PowerPoint presentation for purposes of
   this particular exhibit?
18
19
           That's correct.
      Α
           And what does Towhey say essentially in
20
      Q
21
   this cover e-mail?
22
      Α
           It's saying (reading:)
23
              Please see attached PowerPoint for
24
          what I think will work best in the
          131st. Since this is a campaign and
25
```

not legislative, I think the data 1 2 should be the targeted voters as 3 well as -- I'm sorry -- as will we 4 have on the Corsa sheets. Hanley 5 should have this data ready. Please 6 let me know what you think. Paul. 7 Q And 131, that refers to the House 8 District 131 special election that occurred in July of that year? 9 10 That's correct. Α 11 MR. DONATONI: I'm sorry, Mr. Brown. 12 said that election was in July of that year, '05? 13 MR. BROWN: I believe that's what he just 14 said. 15 BY MR. BROWN: 16 Q Agent Soop, I'm now going to show you an e-mail marked as Commonwealth Exhibit 39. Do you 17 18 recognize that? 19 Α Yes, I do. 20 Q And this is an e-mail from a Brian Kadunc and at least at the top it's to -- looks like 21 he's e-mailing it to himself. Is that right? 22 23 That's correct. Α 24 And then the e-mail that he sent to Q 25 himself appears immediately below that. Is that

```
1
   right?
2
      Α
           That's correct.
3
      Q
           And the e-mail that he's sending to
4
   himself is from who?
      Α
5
           Paul Towhey.
6
      Q
           And, again, according to this,
   April 26th, 2005, was a Tuesday; is that right?
7
8
      Α
           That's correct.
9
      Q
           And the topic of this particular e-mail
   is what?
10
           Blue Card output PDF, the subject in
11
      Α
12
   below e-mail where it was sent directly from
13
   Towhey would be Blue Card.
14
           And then there's a -- I believe it's an
      Q
15
   88-page attachment to this e-mail; is that right?
16
      Α
           That's correct.
17
       Q
           Now, I'm not going to go through each and
18
   every page with you, Agent Soop, but I'm going to
19
   put up one page as a representative sample.
20
      Α
           Okay.
21
       Q
           Now, just for example, Page 15, at the
22
   top of that particular page is captioned what?
23
           Blue Card web dash candidate walking
24
   list, and it also has a specific ward number and
25
   precinct number as well.
```

2

3

4

5

6

7

10

11

12

13

14

15

17

18

19

21

22

24

25

right?

Α

```
And then there looks to be on the left
      Q
   side some basically biographical information --
   name, age, party affiliation, phone number.
   then on the right side there's F, A, U, R, Met,
   YS, and Abs; is that right?
      Α
          That's correct.
      Q
          The stuff to the right of the line, about
   two-thirds of the way over on the page, the F, A,
   U, R, Met, YS, and Abs, is that campaign -- are
   those indications of campaign work?
      Α
          Yes. it is.
      Q
          And the F, A, U, R is favorable, against,
   unregistered, or refused?
      Α
          That's correct.
      Q
          And again, for example, the YS would be
   if they would agree to a yard sign or not?
16
      Α
          That's correct.
      Q
          Now, Agent Soop, you also had the
   opportunity to review various campaign finance
20
   reports; is that right?
          That's correct.
      Α
      Q
          And a summary of at least some of your
23
   findings has been included in a chart; is that
```

That's correct.

I show you what's been marked as 1 Q 2 Commonwealth Exhibit 40 for identification. 3 Now, Agent Soop, this indicates various 4 campaign or other entities and the amounts that 5 they paid particular vendors; is that right? 6 Α That's correct. 7 Q And specifically you focused on certain 8 companies; is that right? 9 Α That's correct. I focused on GCR and 10 Associates, and Aristotle International. 11 Q The first -- the first time GCR is 12 mentioned under a header Friends of John Perzel, 13 parenthesis FOJP close parenthesis, campaign 14 finance expenditure. And it indicates a payment 15 to GCR in the amount of how much money? 16 Α \$37,315.31. And that would cover the 17 time frame between 10/2 of '06 and 12/6 of '06. 18 Q And for Aristotle International, again 19 for the Friends of John Perzel, it indicates that 20 the Friends paid how much money directly to 21 Aristotle International? Α 22 They paid nothing. 23 Q Now, there is a note of a Paul Towhey 24 payment to Aristotle. What time frame are we 25 talking about there and why isn't that in this

chart?

A Paul Towhey actually made payments to Aristotle International totalling \$10,000 from the time period of 4/16/07 and 2/4 of '09. These payments were made essentially out of his own pocket, American Express payments, and were made under his name, not the name of Friends of John.

Q And at the same time there were also payments from Friends of John to Paul Towhey?

A Yes.

Q Moving down to the next category, House Republican Campaign Committee, HRCC expenditures, this indicates that the HRCC paid GCR how much money and over what period of time?

A That would have been \$73,000 and that would have been between 2003 and 2006.

Q Same question for HRCC and Aristotle International?

A No payments were made from HRCC to Aristotle International.

Q Turning to Page 2 of that particular exhibit, what does the review indicate regarding payments to GCR from House Republican Caucus?

A It indicates that payments were made that totalled \$9,286,980 and these payments were made

2

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

24

25

```
between the time periods of March 5th, 2002, and
   December 10th, 2007.
          And how about Aristotle International?
      Q
          Aristotle International was paid by HRC a
   total of $6,200,000 from the time period of
   6/26/03 to 11/19 of '07?
      Q
          Now, also, Agent Soop, just so the
   record, I guess, is clear, you were also prepared
   to testify regarding personnel file of Sue
   Cornell; is that right?
      Α
          That's correct.
          MR. BROWN: And for record purposes, Your
   Honor, all counsel involved in that particular
   charge -- that would be counsel for Perzel,
   Preski, and Stokes -- have previously received
   copies of the Stokes and Cornell personnel
   records. They've agreed that they will go in by
   stipulation and there will be argument on that,
   but no actual testimony in that regard. Is that
   a fair summary.
          MR. MCMONAGLE: That is accurate, Your
   Honor.
23
          MR. WINNING:
                        Yes, sir.
          MR. DONATONI:
                         On behalf of Stokes,
```

that's accurate, Your Honor.

```
Court's indulgence, Your
1
          MR. BROWN:
2
   Honor.
3
   BY MR. BROWN:
          Now, Agent Soop, are you familiar with
4
      Q
   someone by the name of Jay Pelegrin?
5
6
      Α
          Yes, I am.
7
          P-E-L-E-G-R-I-N?
      Q
8
      Α
          Yes, I am.
9
      Q
          And Mr. Pelegrin is whom?
          He's employed by GCR and Associates,
10
      Α
11
   which is housed in New Orleans.
12
           And to the best of your knowledge,
13
   Mr. Pelegrin will be available to testify at
14
   trial in this matter; is that right?
15
      Α
           I spoke to him this morning and confirmed
16
   that fact.
17
      Q
           Did Mr. Pelegrin tell you about a trip he
18
   made to a basement in Philadelphia?
19
      Α
           Yes, he did. In an interview and further
20
   contacts, Mr. Pelegrin had recalled a visit to a
21
   basement in Philadelphia. And he specifically
22
   recalled it because they don't have basements in
23
   New Orleans, so it kind of stuck out in his head.
           And what he recalled is that he had
24
   travelled to Philadelphia. It was kind of like a
25
```

```
1
   regular neighborhood, and he recalled going to
2
   the basement for a meeting. This meeting
3
   involved Al Bowman and Paul Towhey. They were
4
   both present there. He met with them.
5
   meeting lasted several hours. And the total
6
   topic of the meeting was Candidate Connect and
7
   campaign related activity.
8
           The person that you referred to as Al
9
   Bowman, do you see him in the courtroom today?
10
      Α
           Yes, I do.
11
      Q
           Could you point him out, please?
12
      Α
           Yes.
                 Mr. Bowman's second table back.
13
           MS. MCCLELLAND: We'll stipulate.
14
           MR. BROWN:
                       Thank you.
15
           THE COURT:
                       Thank you.
16
           MS. MCCLELLAND: Just to be clear, we're
17
   not stipulating that Mr. Pelegrin can identify.
   Certainly we'll stipulate Mr. Soop can.
18
19
           THE COURT:
                       Okay.
                              Thank you.
20
           MR. BROWN: Sure.
21
   BY MR. BROWN:
           The person by the name of Paul Towhey, do
22
      Q
23
   you see him in the courtroom today?
24
           MR. WOODWARD:
                          I'll stipulate that he's
   in the courtroom for this witness and any other
25
```

```
witness, too, that testifies.
1
2
          MR. BROWN:
                       Thank you.
3
          MR. WOODWARD: With the exception of
4
   Mr. Pelegrin.
5
          MR. BROWN: Fair enough. Thank you.
   Tender for cross.
6
7
          MR. DONATONI: Before we do that, can I
   have a word regarding the stipulation with
9
   Mr. Brown, Your Honor? (Pause.)
          Your Honor, I'm sorry. I apologize for
10
11
   interrupting. My confusion was, and my confusion
12
   has been allayed, that was in being provided with
13
   the Susan Cornell personnel file, I thought I
14
   misapprehended the charges against my client and
15
   I was somehow charged with whatever other
16
   allegations there are other defendants face
17
   regarding Miss Cornell. And I'm advised that I
18
   was initially right, that I am not charged --
   that Mr. Stokes is not charged; is that correct,
19
   Mr. Brown?
20
21
           MR. BROWN:
                       That's correct. The Cornell
22
   personnel file would not, as I understand it, go
23
   to any issue regarding Mr. Stokes.
                                        It was
24
   provided to him out of an abundance of caution
25
   because they're mentioned in the same counts in
```

```
1
   the complaints.
2
           MR. DONATONI: Thank you, sir.
                                            Thank
 3
   you, Mr. Brown.
           MR. MCMONAGLE: No questions.
 4
 5
                       Mr. Winning.
           THE COURT:
6
                   CROSS EXAMINATION
 7
   BY MR. WINNING:
8
           Agent, I represent Brian Preski and I
      Q
9
   have a couple of questions of you regarding this
10
   chart you apparently put together.
11
           Would you look at the second page that is
12
   entitled House Republican Caucus, in parens, HRC,
13
   expenditures?
14
      Α
           Give me one moment, sir.
15
      Q
           Take your time.
16
      Α
           If they can put that up for me.
17
      Q
           Take your time.
18
      Α
           Yes, sir.
           Okay. Did you, as part of your
19
      Q
   investigative activities, did you examine the
20
21
   checks that went to these entities that are set
22
   forth on your chart here?
23
      Α
           Again, my evaluation would have involved
   GCR and Aristotle. And for those purposes,
24
   myself and/or other members of our agent staff,
25
```

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

```
there were checks involved in the review.
Specifically for GCR, for Aristotle, I know we at
least have TUCR reports, which are reports from
treasury reflecting that payments were made by --
       I'm not questioning whether the payments
were made.
   Α
       Okay.
   0
       I'm just asking you whether or not you
had the opportunity to look at the checks, the
actual checks that were made payable to these
entities?
       I do recall seeing checks.
   Q
       Okay. Did you see the GCR checks?
   Α
       I do recall seeing some of the GCR.
   Q
       Did you see the Aristotle checks?
   Α
       I'm pretty sure I did as well, sir.
       Did you see any checks that were signed
   Q
by Brian Preski?
   Α
       No, sir.
   Q
       With regard to Labels & Lists and
Constituents Direct and Weiss Micromarketing, did
you see any of those checks?
   Α
       Again, that wasn't involved in my
evaluation, sir.
       Okay. Did anybody tell you, as part of
   Q
```

```
1
   your investigative team here, that they saw
2
   checks that were signed by Brian Preski?
3
      Α
          No one told me that. No, sir.
        Now, did you examine any of the invoices
4
5
   that were submitted by GCR or Aristotle
6
   International?
7
      Α
          Yes, I did.
8
      Q
          Okay. Did you see any invoices in that
9
   group that were signed off on or approved by
10
   Brian Preski?
11
      Α
          Again, off the top of my head I cannot
12
   recall any, no.
13
      Q
           Not one single one, can you?
14
      Α
           I cannot recall, after review, each
   invoice.
15
16
      Q
           Okay.
                 You're testifying today under
17
   oath, right?
      Α
18
          Yeah.
19
           Can you recall any check that was signed
   by Brian Preski?
20
21
           Out of fairness, I can't recall.
22
   of these checks came out of special leadership
   funding as well. I -- I did not see any with
23
   Brian Preski's name on it.
24
25
       Q
           And did you see any invoices that were
```

```
approved or signed off on by Brian Preski?
1
2
      Α
           I did not personally see any.
3
           MR. WINNING: That's all I have.
           THE COURT: Mr. Lock?
4
           MR. LOCK: I have no questions.
5
           MR. DONATONI: I have a couple, Your
6
7
   Honor.
8
   BY MR. DONATONI:
9
           Good afternoon, Agent Soop. Sir, I think
       Q
10
   we've introduced ourselves, or I have. My name's
11
   Rob Donatoni. I represent Mr. Stokes and I
12
   should be, hopefully, brief here.
13
       Α
           Okay.
14
       Q
           Sir, with respect to your Exhibit C-40 --
   may be up on the screen, it may not be -- but you
15
16
   know the one I'm talking about, correct?
17
       Α
           Yeah, the spreadsheet.
           That is a summary of data that you
18
       Q
19
   examined, correct?
20
       Α
           That's correct.
21
       Q
           I mean the spreadsheet, the two-page
22
   analysis, so to speak, is your work product,
23
   correct?
24
           Part of it is my work product, correct.
       Α
           What part isn't?
25
       Q
```

- A GCR and Aristotle.
- Q Okay. Well, when I say your work product, maybe I'm confusing both of us. Did you have other documents, other records to use to pull out and extract the information that then became part of C-40?
  - A Absolutely.
- Q Okay. When you say part of it's yours and part of it's GCR and Aristotle --
  - A Yes.

- Q -- it would it be fair to say that some of the documents that you relied upon to extract from were the Aristotle and GCR documents?
  - A Absolutely.
- Q Okay. So this is your work product, extracting from other documentation that aren't in this record yet?
  - A That's correct.
- Q Okay. Those records are somewhere for some later time, correct?
  - A That's correct.
- Q All right. And with respect to the documents that you extracted information from in order to generate C-40, and I may have missed your direct examination, were you looking at

```
payments and/or were you looking at contracts?
1
          Contracts, invoices, and payments.
2
      Α
3
      Q
           Okay, the whole deal?
4
      Α
           From various sources, yes.
5
      Q
                 With respect to the sources or
6
   companies or programs in C-40, and I'll ask a
   generic kind of question and maybe we can live
   with that, is that with respect to any
9
   contract -- that with respect to -- let's leave
   it at any contract, Sam Stokes, Mr. Stokes, was
10
11
   not a signatory to any of those, correct?
12
      Α
           To the contracts?
13
      Q
          Yes.
14
      Α
           No.
15
      Q
           Was he a signatory on any payment?
16
      Α
           No.
17
      Q
           In other words -- and let me be clear.
18
   Was he a signatory on any payment out from any
19
   account, and in this case I guess it's either
20
   HRCC or FOJP, to any of the line items identified
   on C-40?
21
           Again, I only -- my only involvement was
22
      Α
23
   those two vendors.
24
       Q
           Okay.
25
           Someone else will testify about the other
       Α
```

```
1
   two, as far as any payouts.
2
      Q
           Did he sign any checks that you're aware
3
   of?
4
      Α
           I did not see any such checks.
5
      Q
           But whatever data you analyzed is still
6
   somewhere for us to review, any of the defense
   lawyers independently at some point in time?
7
8
      Α
           That's correct.
           Now, with respect to C-38 -- I'm sorry.
9
      Q
10
   38 is the e-mail dated April 12th, 2005?
11
      Α
           Yes, sir.
12
      Q
           The PowerPoint.
13
      Α
           Yes.
14
      Q
           And I think it's C-39 that was a larger
   packet of material that Mr. Brown walked you
15
16
   through, and in particular Page 15 as an example,
   right?
17
18
      Α
           Yes.
19
       Q
           Okay. You're aware -- you're one of the,
   if not the, case agent, an agent involved in this
20
21
   investigation, correct?
22
      Α
           I am not case agent. I'm a supervisor.
23
         Your were involved in this investigation?
24
       Α
           I'm a supervisor of the section that did
25
   this investigation.
```

```
Okay. You're a supervisor?
1
      Q
2
      Α
           Yes.
3
           You understand, and correct me if I'm
      Q
   wrong, that a part -- a significant part, or a
4
5
   part of this presentment of this criminal
   complaint is the application of the Blue Card
6
7
   program, correct?
           A portion of it is, yes.
9
      Q
           And as to whether or not it had
10
   legislative or constituent service elements to
   it. correct?
11
           That's correct.
12
      Α
13
       Q
           All right. And I've made it clear to you
14
   or I've told you, and I didn't mean to be
   pejorative, that I represent Mr. Stokes, correct?
15
16
      Α
           Yes.
17
       Q
           The e-mails that you've been asked to
18
   identify, the C-38 from April 12th of 2005 and
   C-39 from April 26, 2005, both refer to Blue
19
   Card. correct?
20
21
           That's correct.
       Α
22
       Q
           But without trespassing in other areas,
23
   it is presented because of campaign implications,
24
   correct?
25
      Α
           Yes.
```

```
1
      Q
           And not legislative, correct?
2
      Α
           That's correct.
 3
           But it's presented -- I'm sorry. C-38
      Q
4
   does not contain any reference, either by origin
5
   of the e-mail or recipient of the e-mail or
6
   forwarding of the e-mail, to Samuel Stokes,
 7
   correct?
8
           That's correct.
 9
           And the same would be true, if I asked
10
   the same question -- origin, copying, or
11
   forwarding -- of C-39 and its attachment,
12
   correct?
13
       Α
           That's correct.
14
           MR. DONATONI: Thank you very much.
15
   That's all I have, Your Honor.
16
           THE COURT:
                       Ms. McClelland.
17
   BY MS. MCCLELLAND:
18
       Q
           Agent Soop, with this analysis that you
19
   performed of the expenditures, did you see any
20
   indication at all that Al Bowman signed off on
21
   any of the contracts?
22
       Α
           Not that he signed off on any, no.
23
       Q
           Did you see any indications that he
24
   signed off on any of the invoices?
25
       Α
           Not to my recollection, no.
```

1 And did he sign off on any of the Q 2 payments that were made? 3 Α Not to my recollection. 4 Q Moving on to this meeting with Mr. Pelegrin, Mr. Pelegrin is an employee of GCR; 5 is that correct? 6 7 Α That's correct. Did he tell you what the purpose -- and 8 9 he came to Pennsylvania, is that my correct 10 understanding? 11 Α Yes, he was here in Pennsylvania. 12 Q Did he tell you what the purpose was for 13 him coming to Pennsylvania? 14 Α He was working in his capacity with the 15 contract with the HRC. He was working for 16 Pennsylvania as he described it. 17 Did he tell you what specific project he 18 was working on when he came to Pennsylvania? 19 Α Candidate Connect. Did he have other reasons for coming to 20 Q 21 Pennsylvania or was it strictly for Candidate 22 Connect? 23 It would depend on the trip. He made 24 numerous trips. 25 Q Would that particular trip --

1

2

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Α On that particular trip, I don't know the sole purpose of the trip itself. I just knew the sole purpose of the trip to Philadelphia was candidate related and it, of course, involved Al Bowman because he was pretty much the creator of Candidate Connect as far as making it happen. Q Correct. There's no dispute about that. Do you know whether or not Mr. Pelegrin is accurate with recalling in Philadelphia? Could it have been a meeting at Bloomsburg at the Mallard campaign offices? He seemed very distinct in his recollection that it was Philadelphia. Q Did he say how long he had been in the Commonwealth at the time that meeting took place? Α I do not recall. Could he have come to or did he say that he came to Pennsylvania for other reasons and this was a meeting that was included in his Pennsylvania trip, one among many? MR. BROWN: Objection, asked and answered. MS. MCCLELLAND: Well, I don't know if he answered that specific question.

THE COURT: Go ahead.

of his trip to Pennsylvania. I recall him describing this very specifically as far as the trip to Philly. I don't know why he was there, whether it was totally for Candidate Connect or it was for some other aspect.

## BY MS. MCCLELLAND:

Q Did he say whether or not this trip -and we'll call it to Philadelphia for the time
being or at least for the purposes of this
hearing -- this trip that he recalls meeting with
Al Bowman and Paul Towhey about Candidate
Connect, did he say whether or not that was paid
for, the expenses of travel, was paid for by the
campaign committee or the caucus?

A He looked at the Pennsylvania contracts as just he's working for Pennsylvania. He was not involved in the invoicing. He -- he never had to report back as far as, oh, hey, so much was spent on the campaign side, so much was spent on the political side. When he went to Pennsylvania, it was working for the Pennsylvania job.

Q All right. So from what he told you or from all you know, that whole trip to

Philadelphia, for the time being, could have been charged to the campaign committee and not the caucus?

A It could have been.

Q You don't have any evidence to say that it wasn't, do you?

A I have -- I have numerous invoices from GCR which reflect his specific meetings with your client, Al Bowman, where they were charged. It's very -- very specific detail as far as campaign related functions being billed to the House Republican Caucus.

This particular one I don't recall off
the top of my head if it's in those many, many
invoices. But I recall seeing your client's name
numerous times in those invoices.

Q Okay. But since you're testifying about this particular incident, let's restrict your answer to this incident, since you really haven't offered evidence on the other meetings, if that's acceptable, or even if it's not.

Your testimony was about Mr. Pelegrin.

And from what I understand, please correct me if
I'm wrong, this meeting with Mr. Pelegrin and Al
Bowman, you have no evidence one way or the other

as to whether this was properly charged off to the campaign committee or improperly charged off to the taxpayers, do you?

A I don't have a specific invoice in front of me for that particular meeting, that's correct.

Q All right. So we have to assume, then, that the meeting was properly charged, don't we?

MR. BROWN: Objection.

THE WITNESS: No, no.

THE COURT: Sustained.

## BY MS. MCCLELLAND:

Q Did Mr. Pelegrin tell you whether or not he had discussed with Al Bowman how that meeting was going to be charged?

A Again, Mr. Pelegrin's recollection of his constant contact with Pennsylvania, he didn't know -- it was a Pennsylvania job. He didn't differentiate. He didn't have to go back and report to their financial people as far as who was creating bills, oh, well, 20 percent of the trip was allocated towards the campaign side, 80 percent was -- or vice versa. He had no -- there was no recordkeeping like that. It was just you're working in Pennsylvania here. That's

```
what you're doing.
1
2
      Q
          Well, you're not suggesting that it's Al
3
   Bowman's decision to tell him to charge all trips
4
   to Pennsylvania one way or the other? He had --
5
   Al Bowman, you would agree, had nothing to do
6
   with what Mr. Pelegrin went back and told his
7
   company how to charge this trip. You'd agree
   with that, wouldn't you?
           I would agree with that portion, correct.
9
      Α
10
           MS. MCCLELLAND:
                            Okay. I have no other
11
   questions.
12
           THE COURT: Mr. Kelly.
13
           MR. KELLY: Thank you, Judge. I'll be
14
   very quick.
15
   BY MR. KELLY:
16
      Q
           Agent, how have you been?
17
      Α
           Pretty good.
18
      Q
           Good to see you. Do you have a response
   to C-38, be the Paul Towhey e-mail that was sent
19
20
   to Eric Ruth?
21
           I do not have one here specifically.
22
   mean, there's -- there's thousands and thousands
23
   of e-mails.
24
      Q
           I understand that. That's not my
25
   question, though. Do you have a response to this
```

```
1
   e-mail, C-38?
 2
      Α
           No, I do not.
 3
      Q
           So for all you know, when Eric -- Eric
 4
   didn't even open up this e-mail, for all you
 5
   know?
 6
           All I know is that e-mail's in front us,
      Α
 7
   and that's what we have.
 8
           I know. And my question, once again, is
      Q
   you -- I'm not trying to be difficult, but for
10
   all you know, Mr. Ruth never opened up this
   e-mail?
11
12
           I wasn't in the room when he received
   that e-mail and don't know that he actually
13
   clicked on it and dpened it up and read it, no.
14
15
           MR. KELLY:
                       Thank you, sir. That's all I
16
   have.
17
   BY MR. WOODWARD:
          Agent, are you aware in reference to
18
       Q
19
   Exhibit 38 and 39, strike that.
20
           Do you know, with respect to Exhibit 38,
   39, whether or not Mr. Towhey was on the Friends
21
   of John Perzel payroll at the time.
22
23
           As I stand in front of you right now at
      Α
   this particular time looking at that date and
24
25
   time, no, I can't say.
```

1 Q Let me draw your attention, sir, to 2 Exhibit 39. Anywhere in that e-mail does it 3 reference a campaign? The word campaign does not appear in that 4 5 particular e-mail. 6 Do you know who George is that's referred Q 7 to in 39? I'm thinking that's referring to a 8 9 candidate, but I'm not sure. 10 George Kenny, would that sound familiar? Q 11 Α That could be. 12 Are you aware, sir, that on August 26th 13 of 2005, the date of this e-mail, George Kenny 14 was not running for election? Actually, it's April 26th. 15 Α 16 Q April I meant to say, strike that. 17 you aware that on April 26th, 2005, George Kenny, 18 Representative Kenny, was not running for 19 election? 20 Α And, again, I -- I don't know. And when 21 I said George, Kenny could be a possibility. 22 could be another candidate named George, too. 23 Q Sir, you agree with me that at least the 24 primary purpose of the legislature is to service 25 the people in his district, true?

```
1
      Α
          Again, we get into varying perspectives
2
   here what the purpose is and what crosses the
3
          I guess it's all in perspective.
   line.
4
      Q
          Sure. Well, in furtherance of that goal,
5
   wouldn't it be wise for the elected
6
   representative to know the names, addresses, and
7
   telephone numbers of the people within his
   district?
8
          Of all the people in his district, that's
9
      Α
10
   correct; not just the ones that vote.
11
      Q
                   And doesn't C-39 refer to all the
          Right.
12
   people in this fellow's district -- democrat,
13
   republican, and otherwise?
14
      Α
          Again, I'm not familiar with the
15
   population. I don't know. I don't live there.
   You know, I don't know who all is on the list, if
16
17
   it's a full --
           I'm sorry?
18
      Q
           I don't know if it's a full evaluation of
19
20
   every resident there.
21
      Q
          Well, it looks pretty representative,
22
   does it not? It's 88 pages long.
23
      Α
           That's kind of mild to a lot of
24
   spreadsheets we've seen.
25
      Q
           Do you have -- do you have this, Agent?
```

```
1
       Α
           I don't have the whole thing here, sir.
2
           Sir, I'm going to show you, it says Page
       Q
 3
   13 of Exhibit 39. You see there's ascending
4
   numerical numbers in the left-hand column?
5
           Yes.
       Α
6
       Q
           Next to that a name?
 7
           Yes.
       Α
8
       Q
           Then a spot for the person's age?
9
       Α
           Yes.
10
       Q
           What's the next column?
11
       Α
           Party, party, political affiliation.
12
       Q
           And would you agree with me that R stands
13
   for republican; D stands for democrat?
14
       Α
           Yes, sir.
15
       Q
           So you would agree with me, sir, that
16
   this is -- appears to be a representative list of
17
   all the people in Mr. Kenny's legislative
18
   district, both their address, telephone number,
19
   party affiliation?
20
       Α
           Of all registered voters.
21
       Q
           Registered voters?
22
           Because I'm not seeing any blanks there
       Α
   on the page that you pointed out to me.
23
24
       Q
           Fair enough.
25
       Α
           Are there any blanks there that would
```

1 show someone that's not --2 Q I'm not going to look at all 88 pages, 3 but from what I see, no. 4 Okay. So they would all be registered 5 voters, which means that's the list he would have obtained would have been all registered voters, 7 not all residents of the area that he serves. Q 8 Okay. 9 Α So based on your question, that would 10 mean that he's -- he's more concerned with the 11 voters instead of all residents. 12 Q Do you know any legislators not more. 13 concerned with the voters? I don't know a whole lot of legislators. 14 Α 15 I know the purpose of -- in my mind of what a 16 legislature should do. 17 Q Right. 18 Α Should represent us all. 19 Q Would you agree with me, sir, that 20 everything in that left-hand column could be and 21 probably is constituent based information? 22 Α With the exception of party affiliation. 23 If you're representing all your constituents, 24 their party shouldn't matter if you're trying to

speak for all your constituents.

```
Let's -- we got to get real here now.
1
      Q
          I'm real.
      Α
3
          Party affiliation is everything.
      Q
4
      Α
           I'm in York County and I'm not a
   politician.
5
           I'm not either. But could -- couldn't
6
      Q
7
   this not be constituent-based information?
8
           MR. BROWN:
                       Objection. Asked and
9
   answered. We've been over this.
10
           THE COURT: Can we move on?
11
   BY MR. WOODWARD:
12
      Q
           Sir, let me ask you this, this fellow
13
   Pelegrin, New Orleans, do you have any idea
   whether he knows a basement in Philadelphia and a
14
15
   basement in Bloomsburg?
16
           I don't know. He seemed really
17
   fascinated with the whole basement concept.
18
           He should be a little bit more fascinated
      Q
   with Bloomsburg. The campaign office, basement
19
20
   office of Representative Mallard, isn't that
21
   where that meeting took place, by the way?
22
      Α
           I don't know.
23
       Q
           By the way, do you know whether or not
24
   Mr. Towhey was on split payroll at that time?
25
       Α
           I don't have his personnel record in
```

1 front of me, no. 2 Q Did Mr. Pelegrin tell you when that 3 meeting occurred with Mr. Bowman and Mr. Towhey? As I recall, he stated it would have 4 started right around the time the Candidate 5 6 Connect had started up. 7 Q Which was? And, again, I don't know off the top of 8 9 my head. I'd have to refer to records. 10 MR. WOODWARD: Thank you, sir. Oh, one 11 more question. May I? 12 MR. SIGMAN: Sure. 13 BY MR. WOODWARD: With respect to 39, you testified that 14 Q 15 Mr. Towhey's credit card was used for Blue Card 16 payments? 17 That's correct. Α 18 Q Those reimbursements weren't made 19 directly to Mr. Towhey, were they? 20 Α The reimbursement from whom, sir? I'm 21 sorry. 22 Q The Friends. They were made directly to 23 American Express, were they not? 24 Α Not having the records in front of me, you may be correct there. 25

```
1
           MR. WOODWARD:
                           Thank you, sir.
 2
           MR. SIGMAN:
                       One moment, Your Honor.
 3
   BY MR.
          WOODWARD:
 4
       Q
           What time of day was that meeting in the
    basement? The basement meeting?
 5
                                       Did he tell
 6
    you?
 7
           I recall him saying during daylight
       Α
 8
    times.
 9
           MR. WOODWARD: Thank you, sir.
10
    BY MR.
          SIGMAN:
11
       Q
           A few brief questions, sir. You remember
12
   when Mr. Donatoni asked you some questions?
13
       Α
           Yes.
14
       Q
           My questions are very, very similar to
15
    his.
16
       Α
           Okay.
17
           The question is Don McClintock's on none
   of these e-mails you brought today, Exhibit 38,
18
19
    39, 40, not on any of the e-mails, right?
20
    cc'd; not bcc; not to, right?
.21
       Α
           That's correct.
22
           Okay. Don McClintock not signing any
23
   checks involving any of these companies --
   Aristotle, GCR, whatever you may have mentioned
24
25
    here today -- right, not signed any checks,
```

```
1
   right?
2
      Α
           That's correct.
3
       Q
           Not sign any invoices, right?
       Α
           That's correct.
4
           None of the invoices go to Don
5
       Q
6
   McClintock; isn't that correct, sir?
7
           I don't know that is correct, but he
      Α
   didn't sign any.
8
9
       Q
           He didn't sign any.
10
       Α
           That's correct.
11
           MR. SIGMAN: I have nothing further.
12
           THE COURT: Mr. Fetterhoff.
13
   BY MR. FETTERHOFF:
    · Q
           Mr. Soop, Exhibit 40, you still have that
14
15
   in front you?
16
       Α
           I'm sure Mark will help me out here.
17
                         What page?
           MR. ECKHART:
18
   BY MR. FETTERHOFF:
19
           Well, it's only two pages. Page 1,
       Q
20
   please.
21
       Α
           Yes, sir.
           Can you see that on the screen there in
22
       Q
   front of you?
23
           Yes, I can.
24
       Α
25
       Q
           Now, just the top half of that, which
```

1 would have been the expenditures by the Friends 2 of John Perzel, first of all, you prepared this 3 chart yourself, right? I prepared the GCR and Aristotle aspects 4 5 of it. 6 Q And somebody else prepared the rest of 7 it, just looking at the top half of the Page 1? 8 I'm just looking at the GCR and Aristotle 9 entries on each one of these categories. 10 Q All right. Let's just limit ourselves to 11 those two for the moment. 12 Α Okay. 13 Q Did you get that information off the 14 campaign finance report filed at different times 15 by the Friends of John Perzel? Α 16 That was one of the sources, correct. 17 Well, is there some other source? Q \$37,315.31 is taking for the period of time shown 18 19 there directly from campaign finance report, 20 right? 21 Α Campaign finance and also independent 22 verification from the vendor. 23 Q Okay. And was that true for Aristotle?

I'm sorry. Was that true for Aristotle

24

25

Α

as well?

1 Q Yes. 2 Aristotle, as I recall, would have been Α 3 the campaign finance as well as evaluation of 4 invoices -- invoices, I'm sorry. 5 Q All right. And the \$2,918,039 6 contributed by the Friends of John Perzel to 7 HRCC, that was the same figure on Friends' 8 finance report as it was on the HRCC receipts, 9 right? Again, HRCC I did not evaluate. 10 Α 11 sorry. Are you referring to the GCR entry? 12 Q No, the HRCC. 13 Right there, no, I did not complete that. Α 14 That would have been another agent who will come 15 in later. But you're content to tell the Court that 16 Q 17 that's accurate? 18 MR. BROWN: Objection. That's not what 19 he said. BY MR. FETTERHOFF: 20 21 Q Are you content to the tell the Court if 22 it's accurate or not? I mean, if it's not 23 accurate I'm going to start to object to the 24 exhibit.

25

I'm testifying that I prepared Aristotle

and GCR and that I know personally that those are accurate because I personally prepared them.

- Q Did you supervise the people who prepared the rest of Page 40?
  - A I do supervise.

- Q Well, did you request -- I mean, here we have an exhibit in Court today. Did you request somebody to affirm the accuracy of these numbers before you're offering it to Judge --
- MR. BROWN: Mr. Fetterhoff, maybe this will help. The next witness takes care of the rest of the chart.

MR. FETTERHOFF: All right.

## BY MR. FETTERHOFF:

- Q Now let me ask you this. In general, then, are you aware from whatever review of the Friends of John Perzel campaign finance report that you did conduct that the Friends paid vendors other than those shown on this chart?
  - A I would believe that to be accurate, yes.
- Q And you're also aware that besides the Friends of John Perzel there were several other political action committees in which Mr. Perzel was interested; is that fair?
  - A That is fair.

1

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3

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19

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21

22

23

24

```
And in addition to the almost $3 million
   Q
contributed by Friends to HRCC, were you aware
that the various Victory funds -- 2004, 2005, and
2006 -- contributed over $2 million to the HRCC?
   Α
       Again, my evaluation was the top two.
   Q
       Did you even look at the Victory funds'
filings?
   Α
       I personally did not, but we had
personnel that did.
       Did you ever look at the 1776 Committee
   Q
filings?
   Α
       That was looked at actually today, yes.
   Q
       And the PA leadership?
   Α
       That was actually looked at today as
well.
   Q
       And the Citizens For Government Reform?
   Α
       Same thing,
   Q
       All right. So it may be, or have you
already confirmed that all of those other
political action committees also made
contributions to HRCC?
   Α
       I didn't do --
       MR. BROWN: Your Honor, at this point I'm
going to object. That's beyond the scope of
direct here.
```

THE COURT: Sustained.

BY MR. FETTERHOFF:

Q Well, is it fair -- I'm going to ask you then directly about this chart, Exhibit 40. Is it fair to say that this is not a comprehensive or completely accurate view of everything contributed by political action committees in which Mr. Perzel was interested to HRCC?

MR. BROWN: Your Honor, again, at this point I'm going to object. There's been no testimony that remotely relates to that question.

THE COURT: Sustained.

MR. FETTERHOFF: Well, I'm going to object to the exhibit at this point, then, because I think it's incomplete, inaccurate, and misleading, since the other political action committees to which I alluded, particularly the Victory funds which contributed over \$2 million, gives the Court a misleading idea about the flow of funds, the amount of funds, the payment of other vendors.

Mrs. Seaman is charged with knowledge here and even the Attorney General's office until this morning had no such knowledge. I ask that the exhibit be stricken. I have nothing else.

```
Your Honor, just for record
 1
           MR. BROWN:
 2
   purposes, obviously the chart for the most part
   speaks for itself and addresses specific vendors
 3
 4
   that were charged in the police criminal
   complaint and affidavit.
 5
 6
           Some of Mr. Fetterhoff's issues -- I
 7
   mean, I'll save other objections for a later
   point, but a lot of these issues will be dealt
   with if the charges are returned, but they're not
10
   relevant here.
11
           THE COURT: For now the exhibit will stay
   in and I assume there will be additional
12
13
   testimony concerning these other areas of this
   particular exhibit.
14
15
           MR. BROWN: That's correct, Your Honor.
16
           THE COURT: Correct? All right.
17
   Mr. Bergstrom.
18
           MR. BERGSTROM:
                          No, sir.
19
           THE COURT: All right.
20
           MS. MCCELLAND:
                           If I may, I have one
21
               I promise it's short.
    question.
    BY MS. MCCLELLAND:
22
23
       Q
           Do you know whether or not Al Bowman was
24
    on payroll for the legislature at the time he met
   with Mr. Pelegrin?
25
```

```
1
           MR. BROWN: Your Honor, again, I'm going
2
   to object. No bouncing back and forth here.
3
                       I agree. This witness is
           THE COURT:
4
   finished. You can step down.
5
           THE WITNESS: Thank you, Judge.
6
           THE COURT: Let's take a break until ten
7
   of, please.
8
           (A recess was taken.)
9
           MR. BROWN: Agent Michael Cranga is next.
10
11
                    MICHAEL CRANGA,
12
   called as a witness, being duly sworn, testified
13
   as follows:
14
                   DIRECT EXAMINATION
15
   BY MR. BROWN:
           Good afternoon. Could you state your
16
       Q
17
   name for the record and spell your last name,
18
   please?
19
           Michael Cranga, last name spelled
   C-R-A-N-G-A.
20
21
           And, Agent Cranga, you're one of the
22
   agents assigned to the investigation involving
23
   the House Republican Caucus; is that right?
24
       Α
           Yes, that's correct.
           And part of your job duties involved
25
       Q
```

reviewing campaign finance expenditures for various entities; is that correct?

A Yes.

- Q A summary of your findings was included in a printout or report; is that right?
  - A Yes.
- Q And would you recognize those -- that printout if you saw it again?
  - A Yes, I would.
- Q I'm showing you what's been marked Commonwealth Exhibit 40 for identification. You can see that from where you are?
  - A Yes.
- Q Now, there's also been testimony about the GCR and Aristotle International for each of those particular entities. I want to ask specifically about the other entities on the list, specifically Labels & Lists, Constituents Direct, Weiss Micromarketing, and then for various other money shifting back and forth involving the caucus, the HRCC, and the Friends of John Perzel.
  - A Okay.
- Q The portions that do not include GCR and Aristotle, those were parts that you worked on;

```
is that right?
1
2
      Α
           Yes.
           Now, Agent Cranga, starting at the top
      Q
4
   half of Commonwealth Exhibit 40, for Labels &
5
   Lists, what do the Friends of John Perzel
6
   campaign finance expenditures indicate how much
   they paid Labels & Lists?
7
           A total there is $489.83.
8
9
       Q
           And for what time frame?
10
      Α
           2004.
           What do the campaign finance expenditures
11
       Q
   for the Friends of John Perzel indicate that the
12
13
   Friends paid Constituents Direct?
14
       Α
           Zero dollars.
15
       Q
           Same question for Weiss Micromarketing?
16
       Α
           Zero once again.
17
           Reimbursements that the Friends made to
18
   the House Republican Caucus for the time period
19
   2002 to 2008?
20
           The total there $9,482.60.
21
           And contributions by the Friends of John
22
   Perzel to the House Republican Campaign Committee
   2000 to 2009?
23
24
       Α
           That total was $2,918,039.
25
       Q
           Did you also see the House Republican
```

Campaign Committee expenditures for some of those same vendors -- Labels & Lists, Constituents

Direct?

A Yes, that's correct.

Q Regarding the HRCC expenditures, what does it indicate the HRCC paid to Labels & Lists

A \$1,725.10.

between 2003 and 2005?

Q Now for Constituents Direct, there are two different entries. One is for the HRCC Landslide report and the other is invoices provided by Zain Kahn?

A Yes, that's correct.

Q Zain Kahn is, I guess, the CEO or the owner of Constituents Direct; is that right?

A Yes. That's my understanding he is.

Q What do the HRCC Landslide reports indicate that the HRCC paid Constituents Direct between 2002 and 2008?

A Landslide reports that were provided to me total \$150,523.08.

Q And then there's a slightly lower number between 2004 and 2008 for the invoices that were provided by Zain Kahn?

A Yes, that's correct, totally \$105,861.50.

```
And, again, we're talking about a
 1
      0
 2
   slightly smaller time frame for invoices?
 3
      Α
           Yes, a few years difference in time
 4
   frame.
 5
      0
           What do the HRCC expenditures indicate
 6
   Weiss Micro -- they paid Weiss Micromarketing?
 7
           Zero dollars, or no expenditures.
      Α
8
           What do the HRCC expenditures reports
       Q
9
   indicate that they paid or reimbursed the House
   Republican Caucus?
10
11
      Α
           It was also zero dollars.
12
       Q
           Turning to Page 2 of Commonwealth
13
   Exhibit 40, these are expenditures made by the
14
   House Republican Caucus; is that right?
15
      Α
           That's correct.
16
       Q
           For Labels & Lists, again, we have two
   different entries with different but overlapping
17
18
   time frames.
19
      Α
           Yes.
20
       O
           The first is Labels & Lists, apparently
21
   you reviewed invoices from the company itself.
22
   Is that right?
23
           Correct. They were provided by Labels &
      Α
24
   Lists.
          And for what time frame do we have
25
      Q
```

```
1
   invoices for Labels & Lists?
           July of '04 through March of 2007.
2
      Α
          And according to that, how much did the
3
      Q
4
   caucus expend to Labels & Lists?
5
      Α
           Total on those invoices was $499,351.66.
6
      Q
           Now, there's another indication there,
7
   treasury expenditure report, and those are
8
   commonly called, I guess, TUCR reports, correct?
9
           Correct, they're referred to as TUCR
      Α
10
   reports.
11
       Q
           And the TUCR reports are received from
12
   where?
13
           They're sent to us by the treasury, by --
      Α
14
   they originally were subpoenaed and they were
15
   received through treasury.
16
       Q
           So that's actually from the government as
17
   opposed to the invoice?
18
       Α
           Correct, that's correct.
19
       Q
           And what do the TUCR reports indicate the
20
   caucus paid Labels & Lists and for what time
21
   period?
22
       Α
           The TUCR reports the total was
23
   $481,473.68.
24
       Q
           And for what time period?
           The time frame there was, looks like,
25
       Α
```

1 March of -- or excuse me, April of '03 through 2 November of 2007. 3 Q Regarding Constituents Direct, again, we 4 have, I guess, invoices provided by the vendor 5 and then invoices provided by the caucus or some 6 other governmental entity. 7 Α Yes. 8 Q Regarding the invoices provided by the 9 vendor, what, according to the vendor invoice. 10 how much did the caucus pay Constituents Direct from 2002 to 2008? 11 12 Α \$5,299,008.52. 13 And for the same time period, the amount 14 according to the invoices provided by the 15 legislature by the comptroller? 16 Α \$5,235,129.32. 17 And similarly, we have two entries for Q 18 Michael Weiss, the first is Weiss Micromarketing, 19 payments I guess directly from the treasury or 20 out of a TUCR report, right? 21 Α Yes. 22 Q And what amount is that? 23 Α Zero dollars. 24 Q And then we have also at least some information from the -- what's called the Special 25

```
1
   R, the Special Republican Leadership Account,
2
   right?
3
      Α
           Correct.
4
           And the -- you have the opportunity to
      Q
5
   review at least a portion of the Special R
   account for payments to Weiss Micromarketing; is
6
   that right?
7
8
      Α
           Yes.
           Between the years 2004 and 2007,
      Q
10
   according to the information provided to the
11
   Office of Attorney General on behalf of the grand
12
   jury, how much money was paid from the Special
13
   Republican Leadership Account to Weiss
14
   Micromarketing?
           $407,159.
15
      Α
16
           MR. BROWN:
                       Thank you, Agent Cranga.
   Court's indulgence for a moment please.
17
                                               (Pause.)
18
   Thank you. Tender for cross.
19
           MR. PERRI:
                       No questions.
20
           THE COURT: Thank you.
21
           MR. WINNING:
                         No questions.
22
           THE COURT:
                       Mr. Lock.
23
                   CROSS EXAMINATION
24
   BY MR. LOCK:
25
      Q
           Agent Cranga, to prepare that portion of
```

Exhibit 40 to which you contributed, I assume it was necessary for you to review the invoices from the various vendors that are listed; is that right?

A Yes, sir. Invoices were subpoenaed and I reviewed those invoices, the ones that were provided.

- Q To whom were those invoices sent?
- A I -- they were sent to our office.
- Q No, no, no, no.

- A I'm not sure what you --
- Q I didn't mean in response. I assume that the invoices that you reviewed were copies of originals sent to somebody?
- A To the various entities that were involved in the relationship with whomever.
  - Q Well, do you know to whom they were sent?
- A I don't have a copy of the invoice in front of me. But if the invoice was -- it had the individual's name or company or whatever that was on it, whoever the contractual relationship was with at the time.
- Q Did one person on this side of the courtroom receive a single invoice that you reviewed to make your contribution to

1

2

4

5

6

7

8

9

10

11

12

13

14

15

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17

18

19

20

21

22

23

24

25

```
Exhibit 40 to which you contributed, I assume it
was necessary for you to review the invoices from
the various vendors that are listed; is that
right?
   Α
       Yes, sir. Invoices were subpoenaed and I
reviewed those invoices, the ones that were
provided.
       To whom were those invoices sent?
   Q
   Α
       I -- they were sent to our office.
   Q
       No, no, no, no.
   Α
       I'm not sure what you --
   Q
       I didn't mean in response. I assume that
the invoices that you reviewed were copies of
originals sent to somebody?
   A To the various entities that were
involved in the relationship with whomever.
       Well, do you know to whom they were sent?
   Q
       I don't have a copy of the invoice in
front of me. But if the invoice was -- it had
the individual's name or company or whatever that
was on it, whoever the contractual relationship
was with at the time.
   Q
       Did one person on this side of the
courtroom receive a single invoice that you
```

reviewed to make your contribution to

```
1
   Commonwealth's Exhibit 40?
2
      Α
           Individuals?
3
      0
          Yeah.
           I don't recall.
4
      Α
5
      Q
          That's actual -- well, do you know if --
6
   if you're unaware whether anyone on this side of
7
   the courtroom received a copy of the invoice, do
8
   you have any information that leads you to
9
   believe that anybody seated on this side of the
   courtroom so much as saw an invoice that you
10
11
   reviewed to make your contribution to
12
   Commonwealth's Exhibit 40?
      Α
           That I don't know, sir.
13
                      Thank you, sir. Those are the
14
           MR. LOCK:
15
   only questions that I have.
16
           MR. DONATONI: Thank you, sir. No
17
   questions.
18
   BY MS. MCCLELLAND:
19
       Q
           Can I just ask you, do you break down how
20
   much of these expenditures were legislative?
21
       Α
           For which ones, ma'am?
22
           For Labels & Lists, for instance, how
       Q
   much of that was legislative?
23
24
       Α
           I would have to look at the invoices.
                                                    Ι
25
   don't have that in front of me as I sit here.
```

```
So your evidence then is that all of it
1
      Q
2
   could have been legislative?
3
      Α
           I wouldn't say that, no.
4
      Q
          But you don't have any evidence to the
5
   contrary?
           But I can't give you exact figures as I
6
      Α
7
   sit here right now.
8
      Q
          What about the same question for
   Constituents Direct?
10
      Α
           Same answer. I -- I don't have the
11
   invoices in front of me. The invoices had
   various things on them. They were for various --
12
13
   various data. I can't sit here and answer
14
   exactly how all of it was used.
15
      Q
           So you have no evidence that any of these
161
   expenditures were campaign related, at least not
   with you today?
17
           I don't. As I sit here today, no, ma'am.
18
      Α
           MS. MCCLELLAND: Okay. I have no other
19
20
   questions.
21
           MR. KELLY: Nothing for me, Judge.
22
           THE COURT:
                       Thank you.
                          No questions, Your Honor.
23
           MR. WOODWARD:
           MR. SIGMAN: No questions.
24
           THE COURT: Thank you.
25
```

## BY MR. FETTERHOFF:

Q Mr. Cranga, when you were preparing the top part of Page 1 on Exhibit 40, which is the expenditures of the Friends of John Perzel to certain vendors --

A Yes.

Q -- am I correct that although the expenditures listed here are directly related to some of the claims in this case, that Friends of John Perzel paid other vendors directly as well? Susquehanna Polling, for instance, Corsa Communications, Cherry Communications, do those sound familiar?

A I -- that information has been reviewed.

I don't have that information here in front of me for those vendors.

Q Well, your recollection, I'm asking you for your recollection now. In order to prepare this chart, Exhibit 40, it was necessary for you at least to review the campaign finance reports filed by Friends of John Perzel, right?

A That's correct.

Q So the vendors listed here is just a snapshot of other vendors --

A Yes.

Q -- the Friends of John Perzel paid?

A Right. There were other vendors that were paid.

Q Now, similarly, the \$2,918,039 contributed by Friends of John Perzel to HRCC, that, likewise, is only a portion of the funds contributed to HRCC by other political action committees in which Mr. Perzel had an interest; is that right?

A That's possible, yes. It's possible there could have been others.

Q Prior to today did you or anyone at the Office of Attorney General have occasion to review the campaign finance reports or the political action committee finance reports for the Victory funds -- Victory 2004, Victory 2005 or Victory 2006?

MR. BROWN: Your Honor, at this point I'm going to object. Again, Commonwealth Exhibit 40 and the testimony on direct examination related to those particular vendors. Going into other political action committees of whatever stripe is beyond the scope of direct and it's irrelevant to the particular charges at issue here.

MR. FETTERHOFF: Well, let me just ask

```
I'll simplify it.
1
   this.
2
          THE COURT:
                       Thank you.
3
   BY MR. FETTERHOFF:
4
      Q
          Prior to today did you or anyone at the
5
   Office of Attorney General have occasion to
6
   review the filings of the Victory funds?
7
           MR. BROWN: | Same objection.
8
           MR. FETTERHOFF:
                            I'm just going to -- I'm
9
   not going to ask about numbers. I'm just going
10
   to go through the list.
11
           THE COURT: You can answer the question.
12
          THE WITNESS: Sir, I couldn't comment on
          I know that that stuff is being looked at.
13
   that.
14
   I can't sit here today with what I brought with
15
   me. I can tell you about the ones that I've
16
   reviewed.
   BY MR. FETTERHOFF:
17
18
           All I'm asking at this point is whether
      Q
19
   vou --
           I'm sure that it has by some agent
20
   somewhere. I'm sure that that's something that's
21
   being looked at. Today I --
22
23
       Q
           What I'm asking you -- I'm going to --
   I'm trying to make it simple and quick. All I'm
24
   asking you is that prior to today do you know
25
```

whether any agent at the Office of Attorney General is looking into the receipts or 2 3 expenditures of the Victory fund? 4 I can't tell you who but I'm sure it's being looked at, yes. I mean, I'll -- we're not 5 6 going to obviously not look at that. But I can't 7 comment on that here today, sir. I've got what's in front of me. I'm trying to answer your 8 9 question. No, no -- when you say I'm sure it's been 10 Q 11 done, are you assuming that or you know for a 12 fact? I'm assuming that's certainly something 13 Α 14 that's going to be looked at. 15 Q No. Really what I'm asking you is 16 whether you know --17 MR. BROWN: Objection. 18 BY MR. FETTERHOFF: 19 Q -- as a matter of fact? 20 Then I can't tell you that, sir. I don't 21 know as I sit here right now. I don't know. 22 Q How many -- how about the other committees, the 1776 Committee, the Citizens For 23 Government Reform, or the PA Leadership? 24 25 MR. BROWN: Same objection.

```
1
          MR. FETTERHOFF: I'm summarizing them all
2
   together to get it done.
3
          MR. BROWN: And I'm going to object to
   them all together.
4.
5
          THE COURT: And I expect I know his
6
   answer but --
7
          THE WITNESS: Same answer, sir. I know
8
   they -- I know they exist. But I could not tell
   you any totals or any numbers. I know they
10
   exist.
   BY MR. FETTERHOFF:
11
12
          All I'm -- I didn't even ask that. What
      Q
13
   I'm asking is whether you or any other agent at
14
   the Office of Attorney General to your knowledge
15
   looked into those political action committees
16
   prior to today, prior to today?
17
          No, prior to today I have not personally.
      Α
18
          MR. FETTERHOFF:
                            Thank you.
          THE COURT: Mr. Bergstrom.
19
20
          MR. BERGSTROM:
                           Nothing, sir.
21
          THE COURT: You can step down. Thank you
22
   very much.
23
          MR. BROWN: Agent Carlson is next. And
24
   actually, Judge, before he comes up, let me take
25
   two minutes to talk to some of the attorneys.
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1 Maybe we can shorten this. 2 Let's take five minutes, Judge. Maybe we 3 can shortcut this. 4 THE COURT: Ten minutes. 5 (A recess was taken.) Thank you, Your Honor. 6 MR. BROWN: May 7 it please the Court, after off-the-record discussions with all counsel, I'm sure we'll put this on the record after we're done, all counsel 9 10 have agreed to stipulations as to the following, 11 regarding Commonwealth Exhibit 41, which would be 12 a packet containing the following items, travel expense voucher for J. Anthony Painter, to the 13 14 Comdex seminar in Las Vegas, Nevada, from 15 November 10th to the 17th, 2001; another packet 16 with a cover memo, January 23rd, 2002, regarding Gregory Harbold; travel expense voucher for Brian 17 18 Preski to the Comdex conference in Las Vegas, 19 Nevada, November 13th to the 16th, 2001; next, a 20 packet to the Comdex Computer Expo in Las Vegas, 21 Nevada, November 10th to the 17th, 2001, for 22 Samuel Stokes; November 10th to the 17th, 2001, 23 to Las Vegas, William Tomaselli, another travel 24 expense voucher; and Eric Ruth, November 10th to 25 November 17th, 2001, Comdex Computer Seminar, Las

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Vegas, Nevada.
1
2
          Commonwealth Exhibit 42 --
3
          MR. DONATONI: That's 41?
          MR. BROWN: That's 41 cumulative.
4
5
   Commonwealth Exhibit 42, travel expense voucher
6
   for Elmer Al Bowman, December 15th to
   December 18th, 2004. It's listed as destination
   itinerary is travelling with Bill Tomaselli to
9
   meet with GCR for development of a communications
   outreach project, New Orleans, Louisiana.
10
11
          Commonwealth Exhibit 43, travel expense
   voucher packet for Tony Painter, January 30th to
12
   February 2nd, 2004, destination itinerary,
13
   Houston, Texas, to meet with HP and Compaq.
14
15
          Commonwealth Exhibit 44, travel expense
16
   voucher packet for Eric Ruth, January 30th to
17
   February 2nd, 2004, destination itinerary
18
   Houston, Texas, to meet with HP and Compag.
19
          This is, in fact, Judge, the same
20
   stipulation regarding the Stokes and Cornell
21
   personnel files. They're to be admitted into
22
   evidence without having the records custodian or
23
   an agent actually testify to them, the contents
24
   of which are available for argument on both
25
   sides. So stipulated?
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1
          MR. MCMONAGLE: So stipulated.
2
          MS. MCCLELLAND: Stipulated.
3
          MR. LOCK: Stipulated.
          MR. BROWN: Is there any objection to the
4
5
   stipulation? I see no response to that. And,
6
   Your Honor, with that, with exception of the
7
   minor matter that Mr. Bergstrom and I talked
   about at sidebar, that concludes the testimony
9
   for today.
          THE COURT: All right. Have you thought
10
   about a start time; with respect to your potential
11
   witnesses for tomorrow? Is 9:00 good? Should we
12
   be here at 8:30?
13
14
          MR. BROWN: Your Honor, based on the some
15
   of the stipulations we've entered into today, and
16
   the remaining Commonwealth witnesses, at least
17
   for tomorrow, I feel confident that a 9:00 start
18
   time is appropriate. Based on the way things go
19
   tomorrow, that may change for Thursday.
20
           MS. MCCLELLAND: Do we have a witness
21
   list for tomorrow?
          MR. BROWN: It will start off with John
22
   Hanley.
23
           MS. MCCLELLAND: Who's after that?
24
          MR. BROWN: And again, with Hanley, that
25
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may go long or short, depending. And then Tony
Painter may be tomorrow. He may be some time on
Thursday.

MR. DONATONI: Is it fair to assume that these guys will be ready to go back-to-back? In other words, so that we may be out of here sooner rather than later on Thursday, depending on how -- the length of the witness?

MR. BROWN: At this point I'm waiting for a call back to confirm Painter's availability for tomorrow. Frankly, because this went a little faster. The idea is to just, if we have time, we bring him in and we run him in and get him done.

THE COURT: I mean, to me, worst case scenario, Thursday has got what I would like to -- and if we're done sooner, but for the Commonwealth to rest Thursday morning, come back prepared for closing arguments right after lunch. We're going to try to limit you guys to ten or 15 minutes, so we're done Thursday. I have no courtroom Friday and beyond, so.

MR. MCMONAGLE: Fine, sir.

MR. DONATONI: I understand there may be a chance -- maybe I'm too optimistic, that if Mr. Painter's available the way we're going we

may get through some of this, depending on how cross goes, a lot of it by the end of tomorrow or into Thursday morning.

MR. BROWN: That's certainly the plan.

If we can get things done and be ready to argue maybe even starting mid morning or earlier

Thursday, I think everybody should be prepared for that so we can finish this up.

THE COURT: The sooner the better. All right. We'll recess until tomorrow morning 9:00.

(A recess was taken.)

MR. BROWN: Your Honor, we have one brief stipulation before we entertain -- or before you entertain argument.

If called to testimony, Special Agent Shaffer, S-H-A-F-F-E-R, would testify that he's employed with the Office of Attorney General, that he reviewed the leave records for various defendants in this case, including defendant John Zimmerman who he can identify. Regarding the week of February 25th through 29th, 2008, Special Agent Shaffer would testify that he reviewed John Zimmerman's leave records, that John Zimmerman was on leave on February 28th, which was Thursday of that week, and that he was not on leave,

according to the record, the remainder of that 1 2 week. So stipulated? 3 MR. BERGSTROM: It is. It is so 4 stipulated. 5 And with that, I guess, I assume, I think I'm correct here, with that the Commonwealth 6 7 would rest their case as respects John Zimmerman. 8 MR. BROWN: That's correct, Your Honor. 9 MR. BERGSTROM: So it would be -- in that event, Your Honor, I would like to move for 10 11 dismissal of these charges against Mr. Zimmerman 12 for a number of, I think, compelling reasons. 13 First of all, obviously there is no factual support for the legal allegations that 14 15 are contained in the arrest warrant. And let me 16 begin by identifying, at least as I understand 17 it, specifically what the allegations are in this 18 case against Mr. Zimmerman. And it's simply a charge of hindering 19 20 apprehension and obstructing administration of 21 law, and then two conspiracies which essentially 22 allege the same thing. 23 But the key language in all of those 24 charges is as follows: By having boxes which

were the subject of at least one statewide

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investigating grand jury subpoena moved from their original location to the speaker emeritus's office in the state capitol, then having those boxes moved to the House Republican Campaign Committee.

That's the key language in the allegation, and that allegation runs through all four of these charges, the two substantive charges and the two conspiracy charges. The key language in that is by having boxes which were the subject of at least one statewide investigating grand jury moved.

Well, first of all, there isn't any evidence in this record that Mr. Zimmerman ever saw or was aware of a grand jury subpoena. None. Zero. No testimony whatsoever. The closest that we come to the testimony with respect to a grand jury subpoena is obviously Agent Fiore.

Agent Fiore says there was a grand jury subpoena that was delivered at 2:30 p.m. on February the 29th. But there's no evidence whatsoever that other than Jill Seaman that anybody knew of its existence, and certainly Mr. Zimmerman didn't know of its existence and Mr. Zimmerman never saw it. So Mr. Zimmerman

doesn't know the very basic point of the allegation deals with that subpoena.

Aside from the fact that the -- the movement of these boxes -- and I'm certainly not conceding for a moment that Mr. Zimmerman knew of the movement of the boxes, because, again, there isn't any evidence that he did -- but the movement of the boxes precedes the service of the grand jury subpoena so that, you know, there's a disconnect between the movement and the subpoena. And there's no evidence that Mr. Zimmerman knew what was in the boxes or that the boxes were moved or that there had been a subpoena issued with respect to those boxes or any boxes, so that there is just a complete lack of evidence.

But if you look -- if you look at the charge of hindering, which is the first charge, it's an interesting -- it's an interesting allegation and it doesn't fit this case. The reason I say that is because if you read the language of 5105, what it says is, "A person commits an offense if with intent to hinder the apprehension, prosecution, conviction, or punishment of another."

And I think we have to read that statute

as it is written, and that is that there must be a hindrance of apprehension; there must be a hindrance of prosecution, conviction, or punishment.

Well, obviously the language of the statute does not include hindering an investigation. It simply isn't there. So that let's assume for the sake of discussion that there was some evidence, which of course there isn't, but let's assume for discussion that there was some evidence that there was a hindering of this investigation, 5105 would not be the vehicle to prosecute that case, because it's pretty clear that 5105 applies only to apprehension, prosecution, conviction, or punishment, none of which is involved in this case. Period.

We have a grand jury subpoena issued on the 29th of February, period. That's it.

That's -- it's an investigative stage. There's no question about it. It's not a prosecution and it certainly isn't punishment or anything that's covered by that particular statute.

So I guess my point is two-fold. Number one, the law here -- the law here doesn't cover the conduct that is the subject of the testimony.

Secondly, the subject of the testimony doesn't even come close to covering what the law is.

If you move on to the charge of obstructing the administration of justice, again, that involves intentionally obstructs, impairs, or perverts of the administration of law or other governmental function by force, violence, physical interference, or obstacle, breach of official duty, or any other unlawful act.

I don't know what that means. And I don't know what the other unlawful act would be here. Because if you don't know that there's a subpoena out there, if you don't know that the boxes have been moved, if you don't know what's in the boxes, then you haven't done anything wrong. And you certainly haven't violated 5101 because you haven't interfered or obstructed or breached an official duty or any other unlawful act. So that, you know, factually, legally, they simply don't make out their case.

And, you know, it really is terribly important, because, you know, we've sat here.

And that's okay. We've listened to the evidence, as you have. But it just doesn't exist as to John Zimmerman. And in my view it would not be

consistent with either the facts or the law of this case to hold him over for a trial when that is really it.

I mean, it's not going to get any better than that. It's never going to get any better. Okay. That's all there is. That's all there ever will be. And it doesn't make it. So that, you know, it's really that simple.

He didn't know about the subpoena. He didn't know what was in the boxes. He didn't know the boxes were moved. And he didn't know that they were in any way responsive to the subpoena.

The Commonwealth may argue that Agent Fiore's chart shows that there was a phone call made from John Zimmerman's desk. No one, not Matthews, not Fiore, not any other witness will ever be able to come into a courtroom, raise his or her hand and swear that John Zimmerman made that phone call. Nobody knows who made that phone call. Let me tell you, if John Zimmerman made that phone call, Lori Lochetto would have said so. And she didn't. She said she's the one that initiated the movement of those boxes. Not John Zimmerman.

So I don't care who picked up John Zimmerman's phone that day and made that call, but there is not a shred of evidence that it was John Zimmerman. That's all I have to say. So I ask that you grant my motion and dismiss these charges.

THE COURT: Mr. Brown, you may respond.

MR. BROWN: Thank you, Your Honor. May it please the Court, Counsel, I think it's important first off, Judge, to make sure that we not lose sight of exactly what's going on here. And I'll start by reiterating what I'm sure the Court already knows, so I'm going to be brief on that, which is the standard here is prima facie. And the Commonwealth isn't required to put on every bit of evidence that we have for any of the charges. It's simply is there enough evidence to get this case in front of a jury, essentially.

And for these particular crimes regarding John Zimmerman, the Commonwealth has met that burden, and here's why. It's important to look not at a piece here or a piece there, as Mr. Bergstrom related to you in his argument. It's important to look at how all these things come together in context. And when you look at

everything in context, there's enough for the jury to find the defendant guilty, or certainly for prima facie, and I, frankly, would submit to you, Judge, beyond a reasonable doubt.

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Because here's what we have. We have boxes that contain campaign material. And they're moved up to -- from B2 in the basement to Room 414 where John Zimmerman works. John -where John Zimmerman works at a job that, according to Lori Lochetto, he's rarely if ever not at his desk. And his desk has an unobstructed view, according to Lori Lochetto, of where these boxes go and where these boxes sit until they're scurried out of the capitol by some phone calls and by the messengers. The messengers are at Lori Lochetto's direction, and they end up over at the HRCC.

So, again, we have John Zimmerman sitting at a desk where he can see all this stuff going on, because he's only on leave on the Thursday after the boxes are already out of there. For the three earlier days that week, the 25th, 26th, and 27th, he's there when all these boxes are moving back and forth and when the boxes ultimately go over to the HRCC.

Now let's add to that. We have John Zimmerman sitting at his desk seeing all these boxes going back and forth and that we have someone using John Zimmerman's desk phone at 4:30 on the 26th making a phone call over to HRCC to arrange to have the boxes over there. Is there going to be somebody over there to accept receipt of these boxes when they go over the next day, when they go over on the 27th?

What else did Lori Lochetto say about the people in John Perzel's office? There are three men that work there at the time. There's John Perzel, whose voice George Matthews knows and it's not John Perzel making the phone call from Zimmerman's desk on where he sits. It's not Paul Towhey, who also works up there, because George Matthews, according to the testimony, also knows Paul Towhey's voice and knows that it's not Paul Towhey.

So when you have John Zimmerman being able to see all these boxes and a call from a male making a call over to the HRCC about the boxes, you have John Zimmerman, at least their prima facie level, Judge, because we've eliminated all the other males that work in

Perzel's office. And John Zimmerman's working that day.

So we have John Zimmerman participating in getting the boxes that contain campaign material out of the capitol over to the HRCC. Then the next day the boxes are moved over. And I'm not sure if you have a copy of Commonwealth 37. I'm happy to hand it up after the argument if you need it.

According to Agent Fiore's testimony and the chart, the boxes, the boxes get moved over to the HRCC at 11:00 on the 27th, the day after Zimmerman or some other unknown male that somehow sneaks into John Perzel's office and makes this phone call from John Zimmerman's desk while John Zimmerman's working. At 11:00 the boxes get moved over.

There are then three calls, again from John Zimmerman's desk phone on a day when he's working at a job where he doesn't necessary -- he doesn't really go anywhere -- according to Lori Lochetto, he sits at his desk -- at 2:08, 2:31 and 7:35 p.m. It's reasonable for the Court to infer, and frankly, it would be reasonable for the jury to infer, Hey, this is John, did the

boxes get over there? We need to get them out of here. Remember, I called you yesterday?

Now, again, we don't have to put on every bit of evidence we have for these calls. The issue is is it enough. And, Judge, in addition to all that stuff leading up to the forthwith subpoena -- and let's not forget there's another subpoena floating out there for earlier in the week, there was also testimony as to that -- but then you get to the 29th where Agent Speaks and Chief Deputy Attorney General Fina go over with, in hand, a forthwith grand jury subpoena that says any and all campaign documents, materials removed from B2 on February 26th, 2008, or the 60 days preceding.

And what does John Zimmerman do and, frankly, what does Paul Towhey do when they get there? Do they talk about all these boxes that are being moved in and out during the days preceding? Do they say, hey, you know, I'm not that sure it was in but we have messengers running cartloads of boxes in and cartloads of boxes out; and John Zimmerman says, Yeah, I made phone calls over there? No, none of that.

Do they -- do they even just stay silent

and don't say anything? No. They both say I don't know what you're talking about; I don't know anything about any boxes; I've never seen any boxes and I don't know if they contain campaign material. I don't know anything about any boxes.

When you add that to everything that goes before and then when you add in that Zimmerman, according to the Krill phone records is interlocked with other people that know what the stuff is, Zimmerman, Feese, Lochetto and all these calls between John Zimmerman and Jill Seaman, who the subpoena was served on by the way, and there was much ado made by various defense attorneys about, well, this is a big deal and we're -- you know, we need to know what's going on and, you know, won't this be something that would be talked about. Of course, it would be talked about.

And Jill Seaman, in some of the seven phone calls to Zimmerman or the four calls to Towhey, it's reasonable, based on all the facts and circumstances that we've adduced, for the jury to infer that Zimmerman was absolutely told what was in the subpoena. And even if he wasn't

told by another coconspirator or another defendant what was in the subpoena, they were told by Speaks and Fina what they were looking for. And they actively misled the prosecution and investigation of this case.

And what they did, Judge -- again, we're talking at a prima facie level, because we haven't put on all the evidence we have. But at a prima facie level, what John Zimmerman did when you look at it in context is he obstructed the administration of justice by an unlawful act of lying to the Office of Attorney General there on behalf of the grand jury.

And in addition to that, he interfered with and clearly by lying about what he knew or what he claimed not to know and by withholding all this information, he also hindered the apprehension or prosecution of other people that he had reason to know were involved here.

Judge, this is a prima facie case. And the issue is whether the Commonwealth has met all of these elements at a prima facie level. When you look at everything in context, there's no doubt that we have. And I ask that the charges be returned on that basis.

MR. BERGSTROM: Can I say just a few things? That's not what he's charged with. I mean, what I just heard is a brand new theory, brand new theory being that somehow John Zimmerman lied to the AG's office. And I don't know when that might be, but I suppose it might be on the evening of the 29th, and that's what obstructed and that's what hindered.

Well, guess what. That's not what this charge says. It doesn't say that at all. It doesn't say John Zimmerman lied. What it says in the charge is that he hindered and that he obstructed by having boxes which were the subject of the subpoena moved, not that he lied. So that, you know, it's really not right to now, when we're all done here, now to come in and say that John Zimmerman lied and that's the basis upon which you should hold this case for trial.

MR. BROWN: Well, let me stop you there because I want to be clear about this. This is not a new theory that the Commonwealth has come up with. The lying is part and parcel of exactly what's charged there.

MR. BERGSTROM: I don't care if it's a new theory or an old theory or anybody's theory.

The fact of the matter is it's not part of the allegation that I'm here to defend against and we've been here to defend against for these -- these days, these whatever that -- whatever they've been. But more importantly, there's a complete misstatement of what was said that night. And the witnesses didn't testify that John Zimmerman said he didn't know anything about boxes and didn't know anything about it.

What the witnesses testified in response to Agent Speaks' inquiry or Frank Fina's inquiry was has any material been removed or hidden. And the response that came not only from Zimmerman but came from everybody else that was down in that area that night was no. We did not remove anything and we did not hide anything.

That was what was said, okay. And again, that has nothing to do with it. Again, what's --what's alleged -- but let me just wrap it up by saying this. What I think you have to do, and I know you know this, but what you have to do is you've got to look back and say, on the basis of this evidence, what is it that John Zimmerman knew? What did he know? And what is the evidence of what he knew?

Lori Lochetto, the best she could do, the very best she could do in this courtroom under oath was to say, John Zimmerman's office, from his office he had a view of what would have passed in front of his office. She never testified that he was in his office. She never testified that he saw what passed in front of his office. She never testified that he knew what was in those boxes. I mean, there could have been a half a dozen chocolate eclairs in those boxes; he wouldn't know that.

There isn't any evidence of what he knew. He didn't know about the subpoena. So that at the risk of being presumptuous, I think this is a simple case and I think the evidence does simply not existent as to John Zimmerman. And I ask you to grant the motion.

MR. BROWN: Two last points, Judge. How is not -- how is saying I don't know anything about any boxes, when the evidence shows the boxes were removed or hidden, first from -- removed and hidden from B2, and next removed or hidden from 414, and not telling the Office of Attorney General about it when you're specifically asked not obstruction of justice?

Removed or hidden, when he participates in it with this phone call on the 26th and then when he either adds to or compounds the crimes he's already committed by furthering the conspiracy and furthering his crimes by lying about it, the jury deserves to hear this evidence because we presented enough for them to hear it. THE COURT: All right. With respect to the charges against Mr. Zimmerman, I'm going to hold the list of charges for the Court of Common I believe the Commonwealth has met a prima facie burden. (Proceedings concluded at 3:59 p.m.) 

# CERTIFICATION

I hereby centify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this is a correct transcript of the same.

June 8, 2010 Date

RMR. Official Court Reporter

\$	15th [1] - 111:6	125:14, 131:2	12:23, 16:4, 16:15,	abnormal [1] - 20:13
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DAUPHIN COUNTY COURT REPORTERS

## ATTACHMENT B

### COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

MOTION TO QUASH INFORMATION

VS.

CRIMINAL NO.: 2524-2010

JOHN R. ZIMMERMAN

### **OMNIBUS PRETRIAL MOTION**

JUL 2 7 2010

COURT ADMINISTRATOR'S

OFFICE DAUPHIN COUNTY

### A. HISTORY

I.

- 1. On November 13, 2009, John Zimmerman was arrested on a warrant alleging violations of 18 Pa. C..S. § 5105 (Hindering Apprehension or Prosecution), 18 Pa. C. S. § 5101 (obstructing Administration of Law) And 18 Pa. C. S. § 903 (Criminal Conspiracy).
- 2. A preliminary hearing was held before the Honorable William C. Wenner on April 21 23 and May 25 27, 2010, for defendant John Zimmerman and nine (9) other defendants <sup>1</sup> all charged with various offenses under Title 18 Pennsylvania Statute.
- 3. The only day during which any testimony was taken relative to defendant John Zimmerman was May 25, 2010. On May 25, 2010, following argument, Judge Wenner held defendant Zimmerman for trial on the above referenced charges.
- 4. On or about July 8, 2010, the Commonwealth filed Informations against all defendants; defendant Zimmerman is charged with those same violations set forth in paragraph 1 above. A copy of the Information is attached as exhibit A.

### B. ARGUMENT

5. Title 18 Pa. C. S. § 5105 and § 5101 state in pertinent part:

7/27/10

<sup>&</sup>lt;sup>1</sup>The nine (9) other defendants are Elmer Bowman, Brett Feese, Donald McClintock, John Perzel, Brian Preski, Eric Ruth, Jill Seaman, Samuel Stokes and Paul Towhey.

- § 5105: "A person commits an offense if, with intent to hinder the . . . prosecution . . . of another for crime . . . he (3) conceals or destroys evidence of the crime . . .
- § 5101: "A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function
- 6. The essence of the charges under all 3 statutory provisions (including conspiracy) is that defendant intentionally hindered prosecution and intentionally obstructed, impaired or perverted the administration of law, "by having boxes which were the <u>subject of at least one</u> statewide investigating grand jury subpoena moved from their original location to the Speaker Emeritus office area in the State Capitol, then having those boxes moved to the House Republican Campaign Committee (HRCC) offices or otherwise hidden from discovery by the grand jury . . ."
- 7. The movement of these boxes is significant according to the Commonwealth because one or more of them allegedly contained campaign material.
- 8. The evidence developed at the preliminary hearing failed as a matter of law to establish a prima facie case warranting holding defendant Zimmerman for trial in the Court of Common Pleas.
- 9. Specifically, the preliminary hearing evidence failed to establish that defendant Zimmerman:
  - i knew of the existence of one or more statewide investigating grand jury subpoenas at the time any boxes were moved;
  - ii knew the contents/commands of the subpoenas;
  - iii knew the contents of any subject box
  - iv was involved in the movement of any box.

10. As aforesaid, the only evidence presented relative to defendant Zimmerman during the preliminary hearing occurred on May 25, 2010. A summary of that testimony follows:

Lori Lochetto testified that from 1995 - 2008 she was employed by the House of Representatives, Republican Caucus, and worked for John Perzel. She also worked for Brian Preski and Paul Towhey. Her office was in Room 414, Main Capitol, an office she shared with John Perzel, Paul Towhey, John Zimmerman and a receptionist (TR. P. 7-8). She was advised by Jason Weiser of the existence of certain boxes in Room B-2 of the Irvis Office Building that contained campaign material. She advised Paul Towhey of her conversation with Jason Weiser; Towhey asked her to go and find out exactly what was there. Ms. Lochetto testified she discovered campaign stationary in the boxes and so advised Paul Towhey. She was instructed by Towhey to bring the boxes to Room 414, sort them and remove the campaign material and have the campaign material taken to HRCC, which she did (TR. pp.10-12). Lori Lochetto did not testify that she had a single conversation with John Zimmerman relative to the boxes, their content, or the movement of same; that John Zimmerman knew of the existence of the boxes or the campaign material; that he had any discussion with her or Paul Towhey; she failed to testify that John Zimmerman was even in the office when these boxes were sorted and moved. In short, she provided no evidence to support the charges against John Zimmerman.

Sheila Flickinger testified she is the finance director for HRCC and that sometime between February 25 - 29, 2008, she received a telephone call from Brett Feese, Esquire inquiring as to whether there had been a delivery to HRCC from "The Hill." She discovered that some boxes had been delivered, some of which contained campaign stationary of John Perzel. She reported this to Brett Feese who advised her to leave the boxes there, "don't touch them, just

leave them where they are . . . " (TR. pp. 43-46). Ms. Flickinger offered no testimony relative to defendant John Zimmerman.

Gary Speaks, Special Agent, Bureau of Criminal Investigations for the Attorney General, testified that on the evening of February 29, 2008, he went to the State Capitol building accompanied by Chief Deputy Attorney General Frank Fina. They were acting in furtherance of a subpoena issued that day. They examined 35 boxes in Room B-2 in the presence of Jack Krill, Esq., George Bibikos, Esq., and Jill Seaman; there was no campaign material contained in these boxes. This group then proceeded to Room 414 in the Main Capitol building where they were met by John Zimmerman. The time was now approximately 9:00 p.m. (TR. 115-116). The group waited for 45 minutes for Paul Towhey to arrive from Philadelphia. Once Mr. Towhey arrived he unlocked the room where the boxes were located and Agent Speaks and Deputy A.G. Fina examined 14 boxes of materials.<sup>2</sup> Prior to Mr. Towhey's arrival, no one in the group, including Mr. Zimmerman had entered the room in Agent Speaks' presence. (TR. p. 131). Mr. Fina inquired of the group whether any materials had been taken out or hidden. Messrs. Krill, Towhey and Zimmerman all responded negatively (TR. p. 117).

Lastly, Agent Anthony Fiore testified he was familiar with a forthwith subpoena served on Jill Seaman, House Republican Caucus (HRC) paralegal at 2:30 p.m.on February 29, 2008 (TR. pp. 10-11). Fiore's investigation revealed that a messenger moved boxes from Room B-2 of the Irvis Office Building to Room 414 in the Main Capitol at the direction of Lori Lochetto.

<sup>&</sup>lt;sup>2</sup>None of these boxes contained campaign material.

Further, that a call was made from John Zimmerman's desk phone in Room 414<sup>3</sup> to HRCC at 4:30 p.m. on February 26, 2008. According to Agent Fiore a Mr. George Matthews who worked for HRCC received a call from an unknown male at 4:30 p.m. February 26. 2008<sup>4</sup> requesting HRCC take delivery of some boxes; Matthews did not recognize the male's voice. Agent Fiore also testified that boxes were moved on February 25, 26, 27, 2008, all at Lori Lochetto's directions (TR. pp. 16-17) and that three (3) calls were made from John Zimmerman's desk phone at 2:08 p.m., 2:31 p.m. and 7:35 p.m on February 27. Again the caller was unknown and unidentified.

The above represents the totality of relevant evidence against John Zimmerman.

Given that the allegation in all three (3) charges contained in the Information involves, "having boxes which were subject of at least one statewide investigating grand jury subpoena moved . . . ," you would expect to find prima facie evidence that (1) John Zimmerman knew of or was aware of the boxes and the movement and (2) more importantly that he knew of and was aware of the subpoena and that the boxes were the subject of the subpoena. Not a single witness testified that Mr. Zimmerman was aware of the movement of boxes or the contents of any one box; not a single witness testified that John Zimmerman was aware of the subpoena(s)<sup>5</sup> or the contents of same. The record is void of <u>any</u> evidence establishing a crime, prima facie.

The offense of hindering apprehension or prosecution is defined in 18 Pa. C.S.A. § 5105

<sup>&</sup>lt;sup>3</sup>Room 414 is John Perzel's office, which he shares with Lochetto, Towhey, Zimmerman and a receptionist. There also is a large conference room in the office.

<sup>&</sup>lt;sup>4</sup>This call was three (3) days before the February 29, 2008 forthwith subpoena (TR. pp. 51-52).

<sup>&</sup>lt;sup>5</sup>The February 26, 2008 subpoena was not even moved into evidence.

which states in pertinent part: "A person commits an offense if, with intent to hinder apprehension, prosecution, conviction or punishment of another for crime . . . (3) conceals or destroys evidence of the crime . . . "

The Information here charges that defendant Zimmerman violated this statute by hindering prosecution, by having boxes moved or hidden from discovery by the grand jury. It is abundantly clear from the context of this case that no "prosecution" was hindered. The language of the statute must be given its plain meaning - prosecution means prosecution - not a grand jury investigation. Clearly, the statute at issue does not contemplate hindering a grand jury investigation, only apprehension, prosecution, conviction or punishment. To complete the analysis, the hindering of prosecution must be "of another" (presumably an identifiable person) for crime. Again, that is not this case. The Information falls short both factually and legally respecting § 5105.

The Information also charges a violation of 18 Pa. C.S.A. § 5101 in that defendant, "intentionally obstructed, impaired or perverted the administration of law," again by having boxes moved or otherwise hidden from discovery by the grand jury. The Information does not state an offense under § 5101. In order to obstruct, impair or pervert the administration of law it must be accomplished via "force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act . . ." Without any factual knowledge of the existence of a grand jury investigation or the issuance of a subpoena, the simple movement of boxes (assuming arguendo that defendant knew the boxes were moved) does not violate this section. It too falls short both factually and legally.

### II. MOTION FOR SEVERANCE

- 1. Defendant Zimmerman is charged in 4 counts only with Hindering Prosecution (Count 1), Obstructing Administration of Law (Count 2), and Conspiracy to commit both offenses (Counts 3-4).
- 2. The Commonwealth has filed a <u>Notice of Joinder Trial of Separate Informations</u> pursuant to Rule 582 (B)(1), Pennsylvania Rules of Criminal Procedure, noticing its intent to try together 10 defendants named in 10 separate informations. A copy of the Notice is attached hereto as exhibit B.
- 3. A joinder of defendants and informations here violates the provisions of Rule 582 (A)(1) and (2).
- 4. The Court should deny the Commonwealth"s request for joinder or in the alternative order separate trials of defendants/offenses pursuant to Rule 583, Pennsylvania Rules of Criminal Procedure.

### A. Argument:

- 5. Rule 582 provides in pertinent part:
  - (A) Standards
  - (1) Offenses charged in separate indictments or informations may be tried together if:
  - (a) The evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or
  - (b) The offenses charged are based on the same act or transaction.
  - (2) Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or

transactions constituting an offense or offenses.

- 6. A simple review of the other nine (9) Informations charging the remaining defendants reveals a joinder here clearly violates both subsections 1 and 2 of Rule 582.
- 7. The other Informations charge the various defendants (excluding defendant Zimmerman) with multiple offenses involving conflict of interest, theft and conspiracy to violate those offenses. Defendant Zimmerman is not charged with those offenses. For example, defendants Jill Seaman and Samuel Stokes are charged with seven (7) counts of Conflict of Interest and thirty-five (35) counts of Theft/Conspiracy; Paul Towhey is charged with four (4) counts of Conflict of Interest, twenty (20) counts of Theft/Conspiracy and two (2) counts of Hindering Prosecution and Obstruction. Defendant Brett Feese is charged with nine (9) counts of Conflict of Interest, thirty-six (36) Theft counts, two (2) counts of Hindering Prosecution and two (2) counts of Obstruction. Defendant Brian Preski is charged with seventy two (72) counts of Conflict of Interest, Theft and Conspiracy. It is believed that defendant Perzel, and the others face charges similar to those of defendants Seaman, Stokes, Feese and Preski. Defendant Zimmerman stands alone, in that he is the only defendant charged only with Hindering Prosecution and Obstruction.
- 8. Evidence of conflict of interest and theft violations by other defendants would not be admissible at a separate trial of defendant Zimmerman. See Rule 582 (1)(a).
- 9. The offenses charged generally are not at all based on the "same act or transaction." See Rule 582 (1)(b).
  - 10. All 10 defendants charged are not "alleged to have participated in the same act or

transaction or in the same series of acts or transactions constituting an offense or offenses." id. at (2).

- 11. Rule 583 Pennsylvania Rules of Criminal Procedure permits the Court to order separate trials of defendants or offenses, "if it appears that <u>any</u> party may be prejudiced. . ."
- 12. A joinder here of defendants and offenses for trial would most certainly prejudice defendant John Zimmerman.

Wherefore, defendant prays an appropriate Order be entered.

Respectfully submitted,

Thomas A. Bergstrom, Hsq

138 Davis Road

Malvern, PA 19355

(610)251-9260

Atty.ID 21131

Dated: July 21, 2010

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON

PLEAS OF DAUPHIN COUNTY,

PENNSYLVANIA

CRIMINAL DIVISION

NO.

CP-22-CR-0002524-2010

JOHN R. ZIMMERMAN,

٧.

DEFENDANT.

OTN: K788095-0

### **INFORMATION**

The Attorney General of the Commonwealth of Pennsylvania, by and through this Information, hereby charges that on or about the dates listed below in the location or locations in the Commonwealth of Pennsylvania listed below, John R. Zimmerman (referred to in this information as Defendant), did commit the following offenses:

# COUNT 1: HINDERING APPREHENSION OR PROSECUTION (18 Pa.C.S. § 5105 – (Felony of the third degree)) MAXIMUM SENTENCE: 7 YEARS INCARCERATION, \$15,000 FINE.

A person commits an offense if, with intent to hinder the apprehension, prosecution, conviction or punishment of another for crime he provides or aids in other means of avoiding apprehension or conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence or warns the other of impending discovery or provides false information to a law enforcement officer.

#### TO WIT:

On or about diverse dates between February 25-29, 2008, in Dauphin County, Pennsylvania, the above named defendant, while employed by the Commonwealth of Pennsylvania, intentionally hindered prosecution by concealing or destroying evidence of a crime by participating in a scheme to have boxes which were the subject of at least one statewide investigating grand jury subpoena moved from their original location to his Speaker Emeritus office area in the State Capitol, then moved to the House Republican Campaign Committee offices or otherwise hidden from discovery by the grand jury, thereby committing the offense of Hindering apprehension or prosecution.

## COUNT 2: OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION

(18 Pa.C.S. § 5101 – (Misdemeanor of the second degree))
MAXIMUM SENTENCE: 2 YEARS INCARCERATION, \$5,000 FINE.

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

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Exhibit A

TO WIT:

On or about diverse dates between February 25-29, 2008, in Dauphin County, Pennsylvania, the above named defendant, while employed by the Commonwealth of Pennsylvania, intentionally obstructed, impaired or perverted the administration of law by participating in a scheme to have boxes which were the subject of at least one statewide investigating grand jury subpoena moved from their original location to his Speaker Emeritus office area in the State Capitol, then moved to the House Republican Campaign Committee offices or otherwise hidden from discovery by the grand jury, thereby committing the offense of Obstructing administration of law or other governmental function.

### COUNT 3: CRIMINAL CONSPIRACY (HINDERING APPREHENSION OR PROSECUTION)

(18 Pa.C.S. § 903 – (Felony of the third degree))
MAXIMUM SENTENCE: 7 YEARS INCARCERATION, \$15,000 FINE.

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime or agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime, and at least one person commits an overt act in furtherance of the conspiracy.

TO WIT: On or about diverse dates between February 25-29, 2008, in Dauphin County, Pennsylvania, the above named defendant agreed with Brett O. Feese and/or John M. Perzel and/or Paul E. Towhey and/or other individuals to intentionally hinder prosecution by concealing or destroying evidence of a crime by participating in a scheme to have boxes which were the subject of at least one statewide investigating grand jury subpoena moved from their original location to his Speaker Emeritus office area in the State Capitol, then moved to the House Republican Campaign Committee offices or otherwise hidden from discovery by the grand jury, thereby committing the offense of Criminal conspiracy.

## COUNT 4: CRIMINAL CONSPIRACY (OBSTRUCING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION) (18 Pa.C.S. § 903 – (Misdemeanor of the second degree))

MAXIMUM SENTENCE: 2 YEARS INCARCERATION, \$5,000 FINE.

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime or agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime, and at least one person commits an overt act in furtherance of the conspiracy.

TO WIT: On or about diverse dates between February 25-29, 2008, in Dauphin County, Pennsylvania, the above named defendant agreed with Brett O. Feese and/or John M. Perzel and/or Paul E. Towhey and/or other individuals to intentionally obstruct the administration of law by concealing or destroying evidence of a crime by participating in a scheme to have boxes which were the subject of at least one statewide investigating grand

jury subpoena moved from their original location to his Speaker Emeritus office area in the State Capitol, then moved to the House Republican Campaign Committee offices or otherwise hidden from discovery by the grand jury, thereby committing the offense of Criminal conspiracy.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

THOMAS W. CORBETT, JR.

Ву:

RICHARD A. SHEETZ, JR.

Executive Deputy Attorney General

Criminal Law Division

Attorney General

PL 1

### IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA CRIMAN AL

COMMONWEALTH OF PENNSYLVANIA

No. CP-22-CR-0002524-2010

JOHN R. ZIMMERMAN

NOTICE OF JOINDER - TRIAL OF SEPARATE INFORMATIONS

The Commonwealth of Pennsylvania, through the Pennsylvania Office of Attorney

General (Criminal Prosecutions Section), hereby gives notice pursuant to Rule 582(B)(1) of the

Pennsylvania Rules of Criminal Procedure of its intent to try together the following informations
and defendants:

Elmer L. "Al" Bowman	No. CP-22-CR-00002590-2010
Brett O. Feese	No. CP-22-CR-00002585-2010
Donald H. McClintock	No. CP-22-CR-00002587-2010
John M. Perzel	No. CP-22-CR-00002589-2010
Brian J. Preski	No. CP-22-CR-00002583-2010
Eric S. Ruth	No. CP-22-CR-00002591-2010
Jill A. Seaman	No. CP-22-CR-00002586-2010
Samuel C. "Buzz" Stokes	No. CP-22-CR-00002584-2010
Paul E. Towhey	No. CP-22-CR-00002588-2010
John R. Zimmerman	No. CP-22-CR-00002524-2010

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL

DATE: June 28, 2010

K. KENNETH BROWN, II

Senior Deputy Attorney General

Pennsylvania Office of Attorney General

Criminal Law Division

Criminal Prosecutions Section

16<sup>th</sup> Floor, Strawberry Square

Harrisburg, PA 17120

(717) 787-6346; (717) 705-7246 (fax)

Pa. Supreme Ct. I.D. #77042

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on the persons listed below on the date indicated by first class mail.

Frank G. Fina, Esq. Chief Deputy Attorney General Office of Attorney General Strawberry Square, 16<sup>th</sup> Floor Harrisburg, PA 17120

K. Kenneth Brown, II, Esq. Senior Deputy Attorney General Office of Attorney General Strawberry Square, 16<sup>th</sup> Floor Harrisburg, PA 17120

Joshua D. Lock, Esq. Goldberg, Katzman, P.C. 320 Market Street, Box 1268 Harrisburg, PA 17108-1268

Brian J. McMonagle, Esq. McMonagle, Perr, McHugh & Mischak 30 South 15<sup>th</sup> Street, Suite 701 Philadelphia, PA 19102

William J. Winning, Esq. Cozen O'Connor 200 Four Falls Corporate Center, Suite 400 West Conshohocken, PA 19482-2958

Robert Donatoni, Esq. Donatoni & Noone 200 North High Street, Suite 301 West Chester, PA 19380 Scot Sigman, Esq. Sigman & Rochlin, LLC 1515 Market Street, Suite 1410 Philadelphia, PA 19102

Evan Kelly, Esq. Goldberg, Meanix & Muth 213 West Miner Street West Chester, PA 19382

Timothy Woodward, Esq. The Palladian 509 Swede Street Norristown, PA 19401

William A. Fetterhoff, Esq. Fetterhoff and Zilli 218 Pine Street Harrisburg, PA 17101

Thomas A. Bergstrom, Esq.

138 Davis Road Malvern, PA 19355

Phone: (610) 251 - 9260 Fax: (610) 251 - 9630

Dated: July 21, 2010

## ATTACHMENT C

RECEIVED

MAR 2 5 2011

Office of Attorney General Prosecutions Section - Hbg.

COMMONWEALTH OF PENNSYLVANIA

: IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA

VS.

JOHN R. ZIMMERMAN BRIAN J. PRESKI SAMUEL C. "BUZZ" STOKES BRETT O. FEESE JILL A. SEAMAN PAUL E. TOWHEY JOHN M. PERZEL

ELMER L. "AL" BOWMAN ERIC S. RUTH

: NO. 2524 CR 2010 : NO. 2583 CR 2010 : NO. 2584 CR 2010

: NO. 2584 CR 2010 : NO. 2585 CR 2010 : NO. 2586 CR 2010 : NO. 2588 CR 2010

: NO. 2589 CR 2010 : NO. 2590 CR 2010 : NO. 2591 CR 2010

### <u>ORDER</u>

AND NOW, this 23<sup>rd</sup> day of March, 2011, following review of the Omnibus Pre-trial Motions filed by the above captioned defendants, together with the various memoranda filed by counsel for the defendants; and following review of the responses of the Commonwealth to said motions, as well as a review of the notes of testimony of the preliminary hearing held before Magisterial District Judge William Wenner; and following extensive argument on said motions, IT IS HEREBY ORDERED as follows:

### Commonwealth v. John R. Zimmerman 2524 CR 2010

The Petition for Writ of Habeas Corpus (styled as a Motion To Quash) filed on behalf of Defendant Zimmerman is hereby DENIED.

Defendant's Motion For Severance requesting a separate trial of defendants/offenses pertaining to charges of Hindering Apprehension, Obstructing Administration of Law and Criminal Conspiracy is GRANTED.

### Commonwealth v. Brian Preski 2584 CR 2010

The Petition for Writ of Habeas Corpus filed by Defendant Preski is hereby DENIED. From a review of the transcript of the preliminary hearing before Magisterial District Judge William Wenner, this court is satisfied that the Commonwealth established a prima facie case.

Defendant Preski's Motion to Quash All Conspiracy Counts is DENIED.

All other motions joined in by this defendant are hereby DENIED.

### Commonwealth v. Samuel C. Stokes, Jr. 2584 CR 2010

The Petition for Writ of Habeas Corpus filed by Defendant Stokes is hereby DENIED. Following a review of the transcript of the preliminary hearing before

Magisterial District Judge William Wenner, this court is satisfied that the Commonwealth established a prima facie case.

Defendant Stokes' Motion to Dismiss Counts 36 Through 42 Inclusive or In The Alternative, To Order The Prosecution To Elect One Count Of Conspiracy Among The Various Counts Charged is hereby DENIED.

Defendant's Motion to Dismiss involving various theft counts as well as counts alleging a conspiracy to violate 18 Pa.C.S.A. §§ 3921(a) and 3922(a)(1) is DENIED.

All other motions joined in by this defendant are DENIED.

### Commonwealth v. Brett Feese 2585 CR 2010

The Petition for Writ of Habeas Corpus Counts 9, 18, 27, 36, 45 and 56, is hereby DENIED. This Court is satisfied following a review of the preliminary hearing transcript that the Commonwealth made out a prima facie case as to these charges. Additionally, the Motion To Dismiss and the Motion In Limine with respect to these counts are also DENIED.

The Petition for Writ of Habeas Corpus Counts 46, 47, 57, and 58 is hereby GRANTED. Following a reading of the transcript of the preliminary hearing, this Court finds that a prima facie case was not established as to Counts 46, 47, 57, and 58.

Based on this court's ruling on the Habeas Corpus petition with respect to Counts 46, 47, 57, and 58, it is not necessary to rule on the Motion to Dismiss (DeMinimus) and the Motion in Limine with respect to these counts.

All other motions filed or joined in by this defendant are hereby DENIED.

### Commonwealth v. Jill A. Seaman 2586 CR 2010

The Motion for Severance filed by Defendant Seaman is DENIED.

The Motion To Dismiss Conspiracy Counts Or To Require Election Of A Single Conspiracy Count is DENIED.

The Motion To Dismiss Conflict Of Interest Counts For Vagueness is DENIED.

The Motion In Limine To Exclude Evidence Of De Minimus Infractions is DENIED.

The Motion In Limine To Exclude Evidence That Non-Legislative Activities

Occurred During A Prosecution Defined "Normal Workday" is DENIED.

The Motion To Dismiss Certain Theft Counts is DENIED.

All other Motions joined in by this Defendant are DENIED.

## Commonwealth v. Paul E. Towhey, Jr. 2588 CR 2010

The Motion To Dismiss Or Petition For Writ Of Habeas Corpus filed on behalf of Defendant Towhey is hereby DENIED.

All other motions joined in by this defendant are hereby DENIED, except with respect to the Motion For Severance filed on behalf of John R. Zimmerman requesting severance of defendants/offenses pertaining to certain charges of Obstructing Administration of Law, Criminal Conspiracy and Hindering Apprehension. Accordingly, based on Defendant Towhey's Motion To Adopt And Join In Motions Of All Co-Defendants, Counts 21, 22, 27, 28 of Defendant Towhey's Information are hereby severed to be consolidated with the counts charging Defendant Bowman with the same offenses.

### Commonwealth v. John M. Perzel 2589 CR 2010

The Petition For Writ of Habeas Corpus filed by Defendant Perzel is GRANTED in part and DENIED in part.

Following a review of the notes of testimony from the preliminary hearing before Magisterial District Judge William Wenner, this court finds that a prima facie case was not presented with respect to Counts 81 (Conspiracy/Hindering Apprehension) and

82 (Conspiracy/Obstructing Administration of Law), and as such the Petition For Writ of Habeas Corpus is GRANTED as to Counts 81 and 82 only.

With respect to Counts 1 through 80, the Petition For Writ of Habeas Corpus is hereby DENIED.

All other motions joined in by this defendant are hereby DENIED.

### Commonwealth v. Elmer Leroy Bowman 2590 CR 2010

Any and all motions joined in by this defendant are hereby DENIED.

### Commonwealth v. Eric S. Ruth 2591 CR 2010

The Defendant's Motion For Writ Of Habeas Corpus and Motion To Dismiss Charges Of Conflict Of Interest, Theft, Theft Of Services, Theft By Deception, Theft By Failure To Make Required Disposition Of Funds Received and Criminal Conspiracy are hereby DENIED.

Certain motions filed on behalf of one or more of the defendants captioned above have already been addressed by this court. To the extent that prior rulings may not have been directed to all defendants, this court rules as follows:

The Motion To Dismiss Conflict Of Interest Counts As Void For Vagueness, and joined in by all defendants, is DENIED.

The Motion To Dismiss Conspiracy Counts Or To Require Election Of A Single Conspiracy Count, and joined in by all Defendants, is hereby DENIED.

The Motion To Dismiss relative to certain theft counts (Theft of Services, Theft by Deception, Theft by Unlawful Taking) as inapposite to charged misconduct (statutory offenses excludes Commonwealth as victim) and joined in by all defendants is DENIED.

The Motion In Limine To Exclude Evidence That Non-Legislative Activities

Occurred During Prosecution Defined "Normal Work Day" As A Violation Of Separation

Of Powers Doctri9ne, and joined in by all defendants, is hereby DENIED.

The Motion To Dismiss The Information, Disqualify Office Of Attorney General, Appoint A Special Prosecutor And Stay All Proceedings is hereby DENIED.

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Richard A. Lewis, Judge

### Distribution:

- Frank G. Fina, Esq., Chief Deputy Attorney General, Office of Attorney General, Strawberry Square, 16<sup>th</sup> Floor, Hbg., PA 17120 K. Kenneth Brown, II, Esq., Senior Deputy Attorney General, Office of Attorney General, Strawberry Square, 16<sup>th</sup> Floor, Hbg., PA 17120
- Christopher D. Carusone, Esq., Chief Deputy Attorney General, Office of Attorney General, Strawberry Square, 16<sup>th</sup> Floor, Hbg., PA 17120
- Patrick Blessington, Esq., Senior Deputy Attorney General, Office of Attorney General, 1000 Madison Avenue, Norristown, PA 19403 Donna J. McClelland, Esq., 329 W. Otterman Rd., Greensburg, PA 15601-2978; (412) 391-7343; mcclellandlaw@comcast.net
- Joshua D. Lock, Esq., GOLDBERG KATZMAN, P.C., 320 Market St., P.O. Box 1268, Harrisburg, PA, 17108-1268; (717) 234-4161; idl@goldbergkatzman.com; jdw@goldbergkatzman.com
- Brian J. McMonagle, Esq., McMONAGLE, PERRI, McHUGH & MISCHAK, P.C., 30 S. 15<sup>th</sup> St., Ste 701, Philadelphia, PA 19102; (215) 981-0999; bmcmonagle@mpmpc.com
- Fortunato N. Perri, Esq., McMONAGLE, PERRI, McHUGH & MISCHAK, P.C., 30 S. 15th St., Ste 701, Philadelphia, PA 19102; (215) 981-0999; fperri@mpmpc.com
- Willam J. Winning, Esq., COZEN O'CONNOR, 200 Four Falls Corporate Ctr. # 400, West Conshohocken, PA 19482-2958; (610) 832-7463; <a href="mailto:www.winning@cozen.com">www.winning@cozen.com</a>
- Megan Scheib, Esq., COZEN O'CONNOR, 1900 Market Street, Philadelphia, PA 19382, (215) 665-5592; mscheib@cozen.com
- Evan Kelly, Esq., 215-215 West Miner St., Westchester, PA 19382; (610) 436-6220; ekelly@mmlaw.net
- William Fetterhof, Esq., FETTERHOFF & ZILLI, 218 Pine St., Harrisburg, PA 17101; (717) 232-7722; (717) 233-4965 (fax); wfetterhoff@live.com
- Robert Donatoni, Esq., 200 N. High St., Ste. 301, Westchester, PA 19380; (610) 719-0500; donatoni111@aol.com
- Timothy Woodward, Esq., 509 Swede St., Norristown, PA 19401; (610) 279-1101; tw@timwoodwardlaw.com
- Thomas A. Bergstrom, Esq., 138 David Rd., Mavern, PA 19355; (610) 251-9260; (610) 251-9630 (fax); <a href="mailto:tabergstrom@verizon.net">tabergstrom@verizon.net</a>; <a href="mailto:tabergstrom@verizon.net">tabergstrom@verizon.net</a>;